AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 79 Wednesday,
No. 190 October 1, 2014

Pages 59087–59422

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Printing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 77 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

Printed on recycled paper.

Contents

Federal Register

Vol. 79, No. 190

Wednesday, October 1, 2014

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service

Animal and Plant Health Inspection Service
RULES
Expansion of Areas in the Philippines Considered Free of Mango Seed Weevil and Mango Pulp Weevil and Establishment of a Lower Irradiation Dose as a Treatment for Mango Pulp Weevil, 59087–59089
Importation of Cape Gooseberry from Colombia into the United States:
Technical Amendment, 59089–59090
NOTICES
Concurrence with OIE Risk Designations:
Bovine Spongiform Encephalopathy, 59207–59208
Environmental Assessments; Availability:
Biological Control Agent for Soybean Aphid in the Continental United States, 59208–59209
Interstate Movements:
Allium spp. Leaves from Hawaii into the Continental United States, 59209–59210
Fresh Achachairu Fruit from Puerto Rico, 59210–59211
Program for Federal Recognition of State Managed Phytosanitary Programs; Implementation, 59211–59213

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59270–59272
Funding Availability:
HIV/AIDS Surveillance and Service Data Analysis in Haiti , 59272
Funding Awards:
HIV/AIDS Surveillance and Service Data Analysis in Haiti under President's Emergency Plan for AIDS Relief, 59272–59273

Centers for Medicare & Medicaid Services
RULES
Medicare and Medicaid Program:
Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction; CFR Correction, 59123
Medicare Program:
Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2015; Correction, 59121–59123

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Community–Based Family Resource and Support Grants (Name changed to Child Abuse Prevention Program, 59273
State Plan for Grants to States for Refugee Resettlement, 59273–59274
Meetings:
Tribal Consultation Sessions, 59274–59275

Civil Rights Commission
NOTICES
Meetings:
New York Advisory Committee; Agenda, 59214

Coast Guard
PROPOSED RULES
Safety Zones:
Navy UNDET, Outer Apra Harbor and Adjacent Waters, GU, 59173–59176

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59214–59215

Commodity Futures Trading Commission
NOTICES
Committee Reestablishment:
Technology Advisory Committee, 59254

Copyright Royalty Board
NOTICES
Cable Royalty Funds:
2012 Distribution, 59306
Satellite Royalty Funds:
2012 Distribution, 59306–59307

Corporation for National and Community Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59254–59255

Defense Department
See Navy Department
PROPOSED RULES
Background Checks on Individuals in DoD Child Care Services Programs, 59168–59173

Department of Transportation
See Pipeline and Hazardous Materials Safety Administration

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Evaluation of the Comprehensive Technical Assistance Centers, 59256

Employee Benefits Security Administration
RULES
Excepted Benefits Amendments, 59130–59137

Energy Department
See Federal Energy Regulatory Commission

RULES
Energy Conservation Program for Certain Commercial and Industrial Equipment:
Standards for Walk–in Coolers and Freezers; Air–Conditioning, Heating, and Refrigeration Institute Petition for Reconsideration, 59090–59091
PROPOSED RULES
Appliance Standards and Rulemaking Federal Advisory Committee:
Meeting of Manufactured Housing Working Group, 59154
Meetings:
Energy Conservation Program for Certain Commercial and Industrial Equipment; Walk–in Coolers and Freezers, 59153–59154
NOTICES
Meetings:
Quadrennial Energy Review, 59256–59257
Presidential Permits; Issuances:
Champlain Hudson Power Express, Inc., Transmission Line Project, 59258–59260

Environmental Protection Agency
RULES
Pesticide Tolerances:
Fluoxastrobin, 59115–59119
Tolerance Requirements; Exemptions:
Tetraacetylethylenediamine and Its Metabolite, Diacetylethylenediamine, 59119–59121
PROPOSED RULES
National Oil and Hazardous Substances Pollution Contingency Plan:
Consolidated Iron and Metal Superfund Site; National Priorities List; Deletion, 59182–59186
Public Notices for Specific Superfund Activities, 59179–59182
Significant New Use Rules:
Certain Nonylphenols and Nonylphenol Ethoxylates, 59186–59195
NOTICES
Existing Stocks Provision of Use Deletion and Product Cancellation Order:
Fenamiphos, 59261–59262

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness Directives:
Bombardier, Inc. Airplanes, 59093–59096
The Boeing Company Airplanes, 59096–59104
Turbomeca S.A. Turboshaft Engines, 59091–59093
PROPOSED RULES
Airworthiness Directives:
Airbus Airplanes, 59154–59157, 59160–59162
Bombardier, Inc. Airplanes, 59157–59160
Gulfstream Aerospace Corporation Airplanes, 59162–59166

Federal Communications Commission
RULES
Commercial Operations in the 1695–1710 MHz, 1755–1780 MHz, and 2155–2180 MHz Bands, 59138–59139

Federal Emergency Management Agency
RULES
Suspensions of Community Eligibility, 59123–59130
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Integrated Public Alert and Warning Systems Inventory, 59285–59286

Federal Energy Regulatory Commission
RULES
Revisions and Technical Corrections to Conform the Commission's Regulations to the Hydropower Regulatory Efficiency Act of 2013, 59105–59112
NOTICES
Combined Filings, 59260–59261

Federal Maritime Commission
NOTICES
Agreements Filed, 59262–59263

Federal Motor Carrier Safety Administration
RULES
Guidance:
Applicability of Language Requirement to Drivers Who Do Not Meet the Hearing Standard, 59139–59140
NOTICES
Commercial Driver's License Standards:
Application for Exemption; Recreation Vehicle Industry Association, 59343–59345
Qualification of Drivers; Exemption Applications:
Diabetes Mellitus, 59351–59357
Epilepsy and Seizure Disorders, 59345–59346
Epilepsy and Seizure Disorders; Denials, 59346–59348
Vision, 59348–59351, 59357–59358
Qualifications of Driver; Exemption Applications:
Epilepsy and Seizure Disorders; Denials, 59358–59360

Federal Reserve System
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59263–59268
Changes in Bank Control:
Acquisitions of Shares of a Savings and Loan Holding Company, 59269
Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction, 59268–59269
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 59269

Federal Transit Administration
NOTICES
Limitation on Claims against Proposed Public Transportation Projects; Correction, 59360

Fish and Wildlife Service
RULES
Endangered and Threatened Wildlife and Plants:
12 Month Finding on Petition to List Rio Grande Cutthroat Trout as an Endangered or Threatened Species, 59140–59150
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Status for Species; Guam and Northern Mariana Islands, 59364–59413
Yellow–billed Loon; 12–Month Finding on Petition to List, 59195–59204
NOTICES
Meetings:
Trinity Adaptive Management Working Group, 59290–59291

Food and Drug Administration
NOTICES
User Fees:
Rare Pediatric Disease Priority Review Voucher , 59275–59276

Forest Service
NOTICES
Meetings:
Black Hills National Forest Advisory Board, 59213
Proposed Directive on Commercial Filming in Wilderness; Special Uses Administration, 59213–59214

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
RULES
Excepted Benefits Amendments, 59130–59137
Patient Protection and Affordable Care Act:
Exchange and Insurance Market Standards for 2015 and Beyond; Correction, 59137–59138
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59269–59270

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services

Industry and Security Bureau
PROPOSED RULES
Export Administration Regulations:
Recordkeeping Requirements, 59166–59167

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

Internal Revenue Service
RULES
Excepted Benefits Amendments, 59130–59137
Local Lodging Expenses, 59112–59115

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Lined Paper Products from India, 59217–59218
Grain–Oriented Electrical Steel from the People's Republic of China, 59221–59223
High Pressure Steel Cylinders from the People's Republic of China, 59220–59221
Initiation of Five–Year (Sunset) Reviews, 59216–59217
Opportunity to Request Administrative Review, 59218–59220
Sunset Reviews, 59215–59216
Determinations of Sales at Less Than Fair Value:
Grain–Oriented Electrical Steel from the People's Republic of China, 59226–59227
Grain–Oriented Electrical Steel from the Republic of Korea, 59224–59226
Grain–Oriented Electrical Steel from the Russian Federation, 59223–59224

International Trade Commission
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Cut–To–Length Carbon Steel Plate from China, Russia, and Ukraine, 59294–59297
Complaints:
Certain Dental Implants, 59297–59298

Justice Department
See Justice Programs Office
See Victims of Crime Office

Justice Programs Office
NOTICES
Anti–Terrorism and Emergency Assistance Program Guidelines; Amendments, 59298

Labor Department
See Employee Benefits Security Administration
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Meetings:
Pecos District Resource Advisory Council, New Mexico, 59291

Legal Services Corporation
NOTICES
Funding Availability:
Provision of Civil Legal Services, Calendar Year 2015 Competitive Grant Funds, 59305
Grant Assurances for LSC Grant Programs, 59305–59306

Library of Congress
See Copyright Royalty Board

Mine Safety and Health Administration
PROPOSED RULES
Refuge Alternatives for Underground Coal Mines, 59167–59168
NOTICES
Petitions for Modifications of Application of Existing Mandatory Safety Standards, 59298–59301
Petitions for Modifications of Applications of Existing Mandatory Safety Standards, 59301–59305

National Institutes of Health
NOTICES
Government–Owned Inventions; Availability for Licensing, 59277–59278
Meetings:
Center for Scientific Review, 59278–59282
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 59282–59283
National Institute of Diabetes and Digestive and Kidney Diseases, 59280

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Northeastern United States:
Atlantic Surfclam and Ocean Quahog Fishery, 59150–59152

PROPOSED RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Commercial Annual Catch Limit/Annual Catch Target Regulations; Framework Action, 59204–59206
NOTICES
Administration Performance Review Board Membership, 59227–59228
Meetings:
Gulf of Mexico Fishery Management Council, 59228
Takes of Marine Mammals Incidental to Specified Activities:
Breakwater Replacement Project in Eastport, ME, 59247–59253
Marina Reconstruction Project, 59228–59238
Pier Maintenance Project, 59238–59247

National Science Foundation
NOTICES
Meetings:
Advisory Committee for Mathematical and Physical Sciences, 59307

Navy Department
NOTICES
U.S. Naval War College; Accredidation by Commission on Institutions of Higher Education, New England Association of Schools and Colleges, 59255

Nuclear Regulatory Commission
NOTICES
Procedures for Meetings:
Advisory Committee on Reactor Safeguards, 59307–59308

Office of United States Trade Representative
See Trade Representative, Office of United States

Personnel Management Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Claim for Unpaid Compensation of Deceased Civilian Employee, 59308–59309

Pipeline and Hazardous Materials Safety Administration
NOTICES
Special Permit Applications:
Applications Delayed More than 180 Days, 59360–59361

Presidential Documents
PROCLAMATIONS
Special Observances:
Gold Star Mother's and Family's Day (Proc. 9176), 59421–59422
National Hunting and Fishing Day (Proc. 9174), 59415–59418
National Public Lands Day (Proc. 9175), 59419–59420

Reclamation Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59291–59294

Securities and Exchange Commission
RULES
Delegation of Authority to the Chief Financial Officer, 59104–59105
NOTICES
Applications:
Northern Trust Investments, Inc., 59309–59319
Self–Regulatory Organizations; Proposed Rule Changes:
BATS Y–Exchange, Inc., 59335–59336
BOX Options Exchange, LLC, 59319–59321
Consolidated Tape Association, 59337–59338
EDGA Exchange, Inc., 59336–59337
Financial Industry Regulatory Authority, Inc., 59322–59331
ICE Clear Credit, LLC, 59340–59341
Miami International Securities Exchange, LLC, 59332–59333, 59338–59340
NYSE MKT, LLC, 59333–59335
Trading Suspension Orders:
China Valves Technology, Inc., 59341

Social Security Administration
NOTICES
Standard Administrative Fees for Nonprogram–Related Information, 59341

Substance Abuse and Mental Health Services Administration
NOTICES
Laboratories and Instrumented Initial Testing Facilities:
List of Facilities which Meet Minimum Standards to Engage in Urine Drug Testing for Federal Agencies, 59283–59285

Surface Transportation Board
NOTICES
Lease and Operation Exemptions:
Southwestern Railroad, Inc. from BNSF Railway Co., 59361

Trade Representative, Office of United States
NOTICES
Annual Review of Country Eligibility for Benefits under the African Growth and Opportunity Act in Calendar Year 2015, 59342–59343

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Transit Administration
See Pipeline and Hazardous Materials Safety Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service

U.S. Citizenship and Immigration Services
NOTICES
Filing Procedures for Employment Authorization and Automatic Extension of Existing Employment Authorization Documents for Liberians Eligible for Deferred Enforced Departure, 59286–59290

Veterans Affairs Department
PROPOSED RULES
Applicants for VA Memorialization Benefits, 59176–59179
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certification of United States Paralympics Training Status, 59362

Victims of Crime Office
NOTICES
Anti–Terrorism and Emergency Assistance Program Guidelines; Amendments, 59298

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 59364–59413

Part III
Presidential Documents, 59415–59422

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
9174 59417
9175 59419
9176 59421

7 CFR
319 (2 documents) 59087, 59089

10 CFR
431 59090

Proposed Rules:
431 59153
460 59154

14 CFR
39 (4 documents) 59091, 59093, 59096, 59102

Proposed Rules:
39 (4 documents) 59154, 59157, 59160, 59162

15 CFR

Proposed Rules:
762 59166

17 CFR
200 59104

18 CFR
4 59105
380 59105

26 CFR
1 59112
54 59130

29 CFR
2590 59130

30 CFR

Proposed Rules:
7 59167
75 59167

32 CFR

Proposed Rules:
86 59168

33 CFR

Proposed Rules:
165 59173

38 CFR

Proposed Rules:
38 59176

40 CFR
180 (2 documents) 59115, 59119

Proposed Rules:
300 (2 documents) 59179, 59182
721 59186

42 CFR
412 59121
430 59123
431 59123
433 59123
435 59123
436 59123
440 59123

44 CFR
64 (2 documents) 59123, 59127

45 CFR
146 59130
147 59137
155 59137

47 CFR
27 59138

49 CFR
391 59139

50 CFR
17 59140
648 59150

Proposed Rules:
17 (2 documents) 59195, 59364
622 59204

Rules and Regulations

Federal Register

Vol. 79, No. 190

Wednesday, October 1, 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.

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2013–0057]

RIN 0579–AD84

Expansion of Areas in the Philippines Considered Free of Mango Seed Weevil and Mango Pulp Weevil and Establishment of a Lower Irradiation Dose as a Treatment for Mango Pulp Weevil

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the list of designated pest-free areas for mango seed weevil and mango pulp weevil within the Philippines. We are also amending the Plant Protection and Quarantine Treatment Manual to establish a specific approved dose of irradiation as an authorized treatment for mango pulp weevil. These actions are necessary because surveys have determined that additional areas within the Philippines are free of mango seed weevil and mango pulp weevil. Additionally, we have determined that the mango pulp weevil can be neutralized with a lower dose of irradiation than the current generic dose for most plant pests of the class Insecta.

DATES: *Effective Date:* October 1, 2014.

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

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart–Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–71, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into and within the United States from certain parts of the world to prevent the introduction of plant pests into the United States.

Prior to the effective date of this final rule, the regulations only allowed mangoes (*Mangifera indica* L.) to be imported into the continental United States from the Philippines if they were produced on the island of Guimaras, which was determined to be free of both *Sternochetus mangiferae* (mango seed weevil) and *S. frigidus* (mango pulp weevil). Mangoes from all other areas of the Philippines except Palawan were eligible for importation into Hawaii and Guam only. Mangoes from the island of Palawan were prohibited entry into all areas of the United States due to the presence of mango pulp weevil.

However, the national plant protection organization (NPPO) of the Philippines requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to recognize additional areas of that country as being free of mango seed weevil and mango pulp weevil. Specifically, the Government of the Philippines asked that we recognize the mango growing regions of Luzon, Visayas, and Mindanao as free of mango seed weevil and mango pulp weevil and the island of Palawan as free of mango seed weevil.

In response to the request by the NPPO of the Philippines, we prepared a commodity import evaluation document (CIED) entitled ''Recognition of Mango Production Sites That are Free of Mango Seed Weevil, *Sternochetus mangiferae* and Mango Pulp Weevil, *Sternochetus frigidus* in the Philippines.''

Based on the evidence presented in the CIED, on April 10, 2014, we published in the **Federal Register** (79 FR 19838–19840, Docket No. APHIS–2013–0057) a proposal [1] to amend the list of designated pest-free areas for mango seed weevil and mango pulp weevil within the Philippines. We also proposed to amend the box labeling restriction in § 301.56–33(d) and the additional declaration requirement in § 319.56–33(e) to refer to areas that are free of mango seed weevil and mango pulp weevil in accordance with the regulations in § 319.56–5 rather than to specific areas. This allows us to update the list of pest-free areas through a notice published in the **Federal Register** in accordance with § 319.56–5 rather than a proposed rule.

In addition, the proposed rule provided notice of a new pest-specific irradiation dose of 165 Gy that we determined is effective against mango pulp weevil in mangoes. The reasons for that determination were described in a treatment evaluation document (TED) we prepared in support of that action. Therefore, we proposed to allow the importation of mangoes from areas of the Philippines that are either free of mango pulp weevil or that are treated for that pest with the new pest-specific irradiation dose. Because the Plant Protection and Quarantine (PPQ) Treatment Manual also lists a pest-specific irradiation dose of 300 Gy for mango seed weevil, which was not previously reflected in the regulations, we also proposed to allow the importation of mangoes from areas of the Philippines that are either free of mango seed weevil or that are treated for that pest in accordance with the authorized pest-specific irradiation dose listed in the Treatment Manual. Finally, we proposed to amend the regulations to allow the use of any approved treatments for *Bactrocera* fruit flies rather than specifically with vapor heat. This allows for the treatment of mangoes from the Philippines with the new irradiation dose for mango pulp weevil or the current irradiation dose for mango seed weevil, both of which exceed the minimum irradiation dose approved for the treatment of *Bactrocera* fruit flies.

We solicited comments on the proposed rule for 60 days ending June 9, 2014. We received eight comments by that date. They were from private citizens, an industry group, and representatives of State and foreign governments. One commenter supported the proposed rule. One commenter raised issues that were not germane to the proposed rule. The issues raised by the other commenters are discussed below.

The majority of commenters objected to the importation of Philippine mangoes into Hawaii because Hawaii also produces mangoes and they were

[1] To view the proposed rule, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0057.*

concerned that the importation of mangoes from the Philippines could cause economic harm to domestic growers or because of concerns that pests within the Philippines could be introduced into Hawaii on Philippine mangoes.

Prohibiting the importation of mangoes from the Philippines into Hawaii is limited by APHIS' statutory authority under the Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*). Under the PPA, APHIS may prohibit the importation of a fruit or vegetable into the United States only if we determine that the prohibition is necessary in order to prevent the introduction or dissemination of a plant pest or noxious weed within the United States. APHIS does not have the authority to restrict imports solely on the grounds of potential economic effects on domestic entities that could result from increased imports. Moreover, Philippine mangoes are already eligible to be imported into Hawaii. Current imports from the Philippines comprise a negligible share of total fresh mango imports and the additional quantity of fresh mango that may be imported from the Philippines because of this rule is unlikely to make an appreciable difference in the total quantity imported. Therefore, it is unlikely that this final rule will have a significant impact on U.S. mango growers.

Additionally, we do not agree with the commenters' concerns regarding a pest risk to Hawaii from the mangoes from the Philippines. Except for the Island of Palawan, where mango pulp weevil is present, all mango growing areas within the Philippines have been confirmed free of mango seed weevil and mango pulp weevil. Therefore, except for Palawan, the only pests of concern that could reasonably be expected to follow the pathway of mangoes from the Philippines are fruit flies of the genus *Bactrocera.* However, these pests are already required to be treated with vapor heat treatment in accordance with 7 CFR part 305. Since the authorization of Philippine mango imports into Hawaii, no pests of concern have been intercepted in commercial shipments of Philippine mangoes to the United States. This final rule authorizes the importation of mangoes from the Island of Palawan if treated with irradiation at a dose of 165 Gy. As stated in the TED, this treatment has been proven effective against mango pulp weevil.

Two commenters objected to Palawan's status as free of mango seed weevil as the island was not included in a 3-year survey to determine the presence of mango seed weevil in growing areas within the Philippines.

Palawan's freedom from mango seed weevil was determined based on historical records provided by the Philippine Bureau of Plant Industry. In the event that mango seed weevil is found in any shipment originating from Palawan, the export program will be suspended unless all shipments are treated with irradiation in accordance with 7 CFR part 305.

Two commenters suggested that all pests of mangoes be treated with irradiation at 165 Gy and stated that shipments of mangoes from the Philippines be prohibited entry into the United States until it can be proven that treatment within the United States would not result in accidental pest introductions.

International Plant Protection Convention standards require that phytosanitary measures represent the least restrictive measures available and result in the minimum impediment to the international movement of people, commodities, and conveyances. Currently, mangoes from areas in the Philippines that are free of mango seed and mango pulp weevils are eligible for importation into the United States if treated for fruit flies with vapor heat or with irradiation at a minimum absorbed dose of 150 Gy. Treatment of mangoes from the Philippines with irradiation at 165 Gy or higher may be required only if the mangoes originate from the island of Palawan where mango pulp weevil is present or are found infested with pests that would justify a higher dose of irradiation. Higher irradiation doses cost more to administer and may affect the marketability of the product. Section 305.9 of the regulations outline safeguards required to prevent the accidental introduction of pests prior to treatment with irradiation at the port of entry within the United States. Such safeguards include, but are not limited to, not removing the packaging on untreated shipments prior to treatment and moving regulated articles in refrigerated or air-conditioned conveyances to minimize pest mobility. In the event that treatment is unable to be properly applied, the facility is also required to have a contingency plan in place for safely destroying or disposing of untreated articles. We believe these safeguards are adequate to prevent the accidental introduction of plant pests into the United States.

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

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit from the availability of mangoes from an additional source. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

This final rule is in response to a request from the Philippines to recognize additional areas (regions in Luzon, Visayas, and Mindanao) as free of mango seed weevil and mango pulp weevil, and the island of Palawan as free of mango seed weevil. Currently, fresh mango from the Philippines is enterable into the United States from the island of Guimaras, considered free of these weevils, subject to treatment to mitigate the risk associated with fruit flies of the genus *Bactrocera.*

In addition, APHIS is amending the PPQ Treatment Manual by adding irradiation at 165 Gy as an option to mitigate the risk associated with mango pulp weevil. This dosage also mitigates the risk associated with fruit flies of the genus Bactrocera.

In 2010 and 2011, fresh mango exports to the United States from the Philippines averaged about 42,000 pounds per year. U.S. mango imports from all sources averaged more than 3.3 billion pounds per year between 2009 and 2012, with most coming from Mexico, Peru, Ecuador, Brazil, and Guatemala. Thus, imports from the Philippines comprise a negligible share of total fresh mango imports, less than 0.002 percent. Given the Philippines' current very small share and the proximity of major Latin American sources, the additional quantity of fresh mango that may potentially be imported from the Philippines because of this rule is unlikely to make an appreciable difference in the total quantity imported.

U.S. mango production (about 6.6 million pounds per year) is equivalent to 0.2 percent of total imports. Most if not all mango farms are small entities in Florida, California, Texas, and Hawaii, where the fruit is primarily marketed locally. Any effect for these farms and for mango importers of additional fresh mango imports from the Philippines will be inconsequential, given the very small change expected to total imports.

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

Executive Order 12988

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

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

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

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

PART 319—FOREIGN QUARANTINE NOTICES

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

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

■ 2. Section 319.56–33 is amended by revising paragraphs (a), (b), (d), and (e) to read as follows:

§ 319.56–33 Mangoes from the Philippines.

* * * * *

(a) *Limitation of origin.* The mangoes must have been grown in an area that the Administrator has determined to be free of mango seed weevil (*Sternochetus mangiferae*) and mango pulp weevil (*Sternochetus frigidus*) in accordance with § 319.56–5 or be treated for mango seed weevil and mango pulp weevil in accordance with the requirements in paragraph (b) of this section. Mangoes from areas of the Philippines that are not free of mango seed weevil or that are not treated for mango seed weevil are eligible for importation into Hawaii and Guam only.

(b) *Treatment.* The mangoes must be treated for fruit flies of the genus *Bactrocera* in accordance with part 305 of this chapter. Mangoes from areas that are not considered to be free of mango pulp weevil in accordance with § 319.56–5 must be treated for that pest in accordance with part 305 of this chapter. Mangoes from areas that are not considered to be free of mango seed weevil in accordance with § 319.56–5 must be treated for that pest in accordance with part 305 of this chapter or they are eligible for importation into Hawaii and Guam only.

* * * * *

(d) *Labeling.* Each box of mangoes must be clearly labeled in accordance with § 319.56–5(e)(1). Consignments originating from areas that do not meet the requirements in paragraph (a) of this section for freedom from or treatment for mango seed weevil must be labeled ''For distribution in Guam and Hawaii only.''

(e) *Phytosanitary certificate.* Mangoes originating from all approved areas must be accompanied by a phytosanitary certificate issued by the Republic of the Philippines Department of Agriculture that contains an additional declaration stating that the mangoes have been treated for fruit flies of the genus *Bactrocera* in accordance with paragraph (b) of this section either in the Philippines or at the port of first arrival within the United States. Phytosanitary certificates accompanying consignments of mangoes originating from pest-free mango growing areas within the Philippines must also contain an additional declaration stating that the mangoes were grown in an area that the Administrator has determined to be free of mango seed weevil and mango pulp weevil or have been treated in accordance with paragraph (b) of this section.

* * * * *

Done in Washington, DC, this 26th day of September 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–23406 Filed 9–30–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2012–0038]

RIN 0579–AD79

Importation of Cape Gooseberry From Colombia Into the United States; Technical Amendment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: In a final rule published in the **Federal Register** on May 2, 2014, and effective on June 2, 2014, we amended the fruits and vegetables regulations to allow the importation of cape gooseberry from Colombia into the United States under a systems approach. The final rule stated that capture of a Mediterranean fruit fly in a registered place of production would result in immediate cancellation of exports from farms within 5 square kilometers of the detection site. Our intent, however, was to specify that a Medfly detection would result in immediate cancellation of exports from farms within a 5 kilometer radius, rather than an area of 5 square kilometers. This document amends the regulations to reflect our intent.

DATES: *Effective Date:* October 1, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2352.

SUPPLEMENTARY INFORMATION: In a final rule [1] that was published in the **Federal Register** on May 2, 2014 (79 FR 24995–24997, Docket No. APHIS–2012–0038), and effective on June 2, 2014, we amended the fruits and vegetables regulations to add a section, § 319.56–67, that allows the importation of cape gooseberry (*Physalis peruviana*) from

[1] To view the rule, supporting analyses, and comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0038.*

Colombia into the United States under a systems approach.

One of the provisions of the systems approach, found in paragraph (b)(1) of § 319.56–67, required the cape gooseberry to be produced in places of production that are registered with the national plant protection organization (NPPO) of Colombia. Another, found in paragraph (c)(1) of § 319.56–67, required trapping for Mediterranean fruit fly (Medfly, *Ceratitis capitata)* at registered places of production. Finally, paragraph (c)(2) of § 319.56–67 specified that capture of Medfly at a registered place of production would result in immediate cancellation of exports from farms within 5 square kilometers of the detection site, and required an additional 50 traps to be placed in the 5 square kilometer area surrounding the detection site.

Our intent was to prohibit exports from farms within a 5 kilometer radius (78.54 square kilometers) of a detection site, rather than 5 square kilometers. Cancelling exports from within 5 square kilometers of the detection site, however, would prohibit exports only from within a 1.26 kilometer radius of the detection site.

The additional trapping would have to occur in this 5 square kilometers area surrounding the detection site. In other words, our intent was to specify that additional trapping would have to occur in an area circumscribed by a larger area from which exports would be prohibited. Due to drafting errors, however, neither the rule nor its supporting documents reflected this intent.

Accordingly, we are amending paragraph (c)(2) of § 319.56–67 to specify that capture of Medfly at a registered place of production will result in immediate cancellation of exports from farms within a 5 kilometer radius (78.54 square kilometers) of the detection site, and to specify that an additional 50 traps must be placed within an area with a 1.26 kilometer radius (5 square kilometers) surrounding the detection site.

List of Subjects in 7 CFR Part 319

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

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

PART 319—FOREIGN QUARANTINE NOTICES

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

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

■ 2. In § 319.56–67, paragraph (c)(2) is revised to read as follows:

§ 319.56–67 Cape gooseberry from Colombia.

* * * * *

(c) * * *

(2) All fruit flies trapped must be reported to APHIS immediately. Capture of *C. capitata* will result in immediate cancellation of exports from farms within a 5 kilometer radius (78.54 square kilometers) of the detection site. An additional 50 traps must be placed within an area with a 1.26 kilometer radius (5 square kilometers) surrounding the detection site. If a second detection is made within 30 days of a previous capture, eradication using a bait spray agreed upon by APHIS and the NPPO of Colombia must be initiated in the detection area. Treatment must continue for at least 2 months. Exports may resume from the detection area when APHIS and the NPPO of Colombia agree the risk has been mitigated.

* * * * *

Done in Washington, DC, this 26th day of September 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–23402 Filed 9–30–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE–2014–BT–PET–0041]

Energy Conservation Program for Certain Commercial and Industrial Equipment: Energy Conservation Standards for Walk-in Coolers and Freezers; Air-Conditioning, Heating, & Refrigeration Institute Petition for Reconsideration

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

ACTION: Petition for reconsideration; agency response.

SUMMARY: The Department of Energy (DOE) received a petition from the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), requesting that DOE reconsider its June 3, 2014 final rule setting energy conservation standards for walk-in coolers and freezers. AHRI sought reconsideration of the final rule based on its view that errors purportedly committed by DOE led to the adoption of standards that were neither technologically feasible nor economically justified. DOE is denying the petition.

DATES: This denial is effective on October 1, 2014.

FOR FURTHER INFORMATION:

John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121, (202) 287–1692, or *email: john.cymbalsky@ee.doe.gov*.

Michael Kido, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8145, *email: Michael.Kido@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) received a petition from the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) dated July 30, 2014, requesting that DOE reconsider its final rule setting energy conservation standards for walk-in coolers and freezers (''WICFs'' or ''walk-ins''). Energy Conservation Standards for Walk-In Coolers and Freezers, Docket No. EERE–2008–BT–STD–0015, RIN 1904–AB86, 79 FR 32050 (June 3, 2014) (''WICF Final Rule'' or, in context, ''the Rule'').

DOE adopted the WICF Final Rule in accordance with the Energy Policy and Conservation Act of 1975, as amended (''EPCA''). EPCA, as amended, governs the manner in which DOE will implement its rulemaking process for prescribing energy conservation standards for various consumer products and certain commercial and industrial equipment. At issue in AHRI's petition is the stringency of the energy conservation standards DOE adopted for refrigeration systems of WICFs. Those standards relied in part on certain modifications made to the walk-in test procedure that DOE adopted to ease the testing burden on refrigeration system manufacturers. *See* 79 FR 27387 (May 14, 2014). DOE determined these standards would result in the significant conservation of energy and are technologically feasible and economically justified, thereby meeting the statutorily required elements for an energy conservation standard. 42 U.S.C. 6295(o)(2)(A). AHRI asserted that the standards adopted by DOE for walk-in refrigeration systems were based on what AHRI characterizes as ''errors'' that resulted in standards that were neither technologically feasible nor economically justified.

Unlike some other statutes governing standard-setting through rulemaking, EPCA contains no provision setting forth a procedure for agency reconsideration of already prescribed final rules that established or revised energy conservation standards. Instead, the legal framework established in EPCA by Congress provides a means to enable a person to seek amendment of DOE's existing rules under certain circumstances, not reconsideration of a newly promulgated rule. *See* 42 U.S.C. 6295(n). Accordingly, AHRI's self-styled ''petition for reconsideration'' is procedurally improper.

Alternatively, even if DOE were to construe AHRI's petition for reconsideration as seeking amendment, rather than reconsideration of the WICF rule, pursuant to 42 U.S.C. 6295(n), AHRI would still fail to establish a valid basis for granting the petition. First, consistent with the statutory structure described above and the general requirement that agencies provide an interested person the right to petition for ''the issuance, amendment, or repeal of a rule,'' *see* 5 U.S.C. 553(e), EPCA permits interested persons to petition DOE to amend its standards. See 42 U.S.C. 6295(n). While that provision applies to any final rule, it also requires that the petition satisfy certain criteria. With regard to these criteria, DOE may only grant such a petition if, assuming no other information were considered, the petition provides evidence providing an adequate basis to amend the standard if the amended standard would result in the significant conservation of energy, would be technologically feasible, and would be cost effective, as described under 42 U.S.C. 6295(o)(2)(B)(i)(II) (*i.e.,* ''the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard''). *See* 42 U.S.C. 6295(n)(2). AHRI's petition, which focuses on newly issued standards, which are not yet in effect, and makes claims regarding those standards and certain procedural steps, does not meet the prescribed criteria under the statute. Moreover, even if AHRI's petition satisfied the criteria under 42 U.S.C. 6295(n), it does not establish a valid basis for amendment of the final rule because AHRI seeks an amended standard that would increase the maximum allowable energy use or decrease the minimum required energy efficiency of a covered product, contrary to EPCA. *See* 42 U.S.C. 6295(o)(1).

Further, DOE notes that AHRI's petition appears to reflect a fundamental misunderstanding of how to perform the calculations required to rate a given refrigeration component. Accordingly, AHRI's petition is predicated on a flawed set of calculations and assumptions.

While the issues raised in AHRI's petition do not warrant amending the WICF standards, DOE believes that it would be beneficial to hold a public meeting to demonstrate how DOE's test procedure and refrigeration system standards interact with each other and how manufacturers must calculate the efficiency of their respective refrigeration systems. The public meeting, which DOE had already planned to hold in response to inquiries regarding this interaction, will help ensure that stakeholders properly apply the test procedure when assessing the compliance of their equipment with the applicable standard. A parallel notice is also being published in the **Federal Register** today which contains details regarding this public meeting.

Issued in Washington, DC, on September 23, 2014.

Kathleen B. Hogan,

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

[FR Doc. 2014–23416 Filed 9–30–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0164; Directorate Identifier 2014–NE–02–AD; Amendment 39–17973; AD 2014–19–05]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Turbomeca S.A. Arriel 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, 1S1, 2B, 2B1, 2C, 2C1, 2C2, 2S1, and 2S2 turboshaft engines. This AD requires an initial one-time vibration check of the engine accessory gearbox (AGB) on certain higher risk Arriel 1 and Arriel 2 model engines. This AD also requires repetitive vibration checks of the engine AGB for all Arriel 1 and Arriel 2 engines at every engine shop visit. This AD was prompted by reports of uncommanded in-flight shutdowns on Turbomeca S.A. Arriel 1 and Arriel 2 engines following rupture of the 41-tooth gear forming part of the 41/23-tooth bevel gear located in the engine AGB. We are issuing this AD to prevent failure of the engine AGB, which could lead to in-flight shutdown and damage to the engine, which may result in damage to the aircraft.

DATES: This AD becomes effective November 5, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 5, 2014.

ADDRESSES: For service information identified in this AD, contact Turbomeca, S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; telex: 570 042; fax: 33 (0)5 59 74 45 15. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0164; 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 mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7758; fax: 781–238–7199; email: *mark.riley@faa.gov.*

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 the specified products. The NPRM was published in the **Federal Register** on June 4, 2014 (79 FR 32195).

The NPRM proposed to correct an unsafe condition for the specified products. This AD results from an MCAI originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI states:

Several cases of uncommanded in-flight shut-down (IFSD) have been reported on ARRIEL 1 or ARRIEL 2 engines following rupture of the 41-tooth gear forming part of the 41/23 tooth bevel gear located in the accessory gearbox (AGB) within engine module M01.

Results of subsequent investigations showed that the meshing quality of the bevel gear may have contributed to tooth rupture.

The rupture of the AGB 41-tooth gear may lead to loss of driving of equipment essential to engine operation.

This condition if not detected and corrected, could lead to an uncommanded engine in-flight shut-down and may ultimately lead to an emergency landing.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request To Provide Sufficient Compliance Time

One commenter requested that we provide sufficient time to comply with the AD. The commenter indicated that special tooling, to be supplied by Turbomeca, is necessary to comply with the AD. The vibration check itself is also performed by Turbomeca representatives.

We do not agree. Our analysis has confirmed that 32 months is sufficient time for operators to complete the actions required by this AD. We did not change this AD.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting this AD as proposed.

Costs of Compliance

We estimate that this AD affects 1,268 engines installed on aircraft of U.S. registry. We also estimate that it will take about 4 hours per engine to comply with the inspection requirement in this AD. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $431,120.

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 to the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

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):

2014–19–05 Turbomeca S.A.: Amendment 39–17973; Docket No. FAA–2014–0164; Directorate Identifier 2014–NE–02–AD.

(a) Effective Date

This AD becomes effective November 5, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Turbomeca S.A. Arriel 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, 1S1, 2B, 2B1, 2C, 2C1, 2C2, 2S1, and 2S2 turboshaft engines.

(d) Reason

This AD was prompted by reports of uncommanded in-flight shutdowns on Turbomeca S.A. Arriel 1 and Arriel 2 engines following rupture of the 41-tooth gear forming the 41/23-tooth bevel gear located in the engine accessory gearbox (AGB). We are issuing this AD to prevent failure of the engine AGB, which could lead to in-flight shutdown and damage to the engine, which may result in damage to the aircraft.

(e) Actions and Compliance

Unless already done, do the following.

(1) For all Turbomeca S.A. Arriel 1B, 1D, 1D1, 2B, and 2B1 turboshaft engines, perform a one-time vibration check of the AGB 41/23-tooth bevel gear meshing within 32 months of the effective date of this AD, as follows:

(i) For all Turbomeca S.A. Arriel 1B, 1D, and 1D1 engines, except those engines with an AGB installed with a serial number (S/N) listed in Figure 1 of Turbomeca S.A. Mandatory Service Bulletin (MSB) No. 292 72 0839, Version B, dated November 25, 2013, use paragraphs 6.A. through 6.C. of Turbomeca S.A. MSB No. 292 72 0839, Version B, dated November 25, 2013, to perform the vibration check. Turbomeca S.A. MSB No. 292 72 0839 refers to Turbomeca S.A. Arriel 1 Technical Instruction (TI) No. 292 72 0839, Version E, dated February 20, 2014, and Turbomeca S.A. Arriel 1 TI No. 292 72 8, Version A, dated November 29, 2013, which you must also use to do the vibration check.

(ii) The reporting requirements in paragraphs 6.A.(1)(c), 6.A.(2)(b), and 6.B.(1)(c) and the requirement to return module M01 in paragraph 6.B.(2)(b)*2* of Turbomeca S.A. MSB No. 292 72 0839, Version B, dated November 25, 2013, are not required by this AD.

(iii) For all Turbomeca S.A. Arriel 2B and 2B1 engines, except those engines with an AGB installed with an S/N listed in Figure 1 of Turbomeca MSB No. 292 72 2849, Version B, dated November 25, 2013, use paragraphs 6.A. through 6.C. of Turbomeca S.A. MSB No. 292 72 2849, Version B, dated November 25, 2013, to perform the vibration check. Turbomeca S.A. MSB No. 292 72 2849 refers to Turbomeca S.A. Arriel 2 TI No. 292 72 2849, Version E, dated February 20, 2014, and Turbomeca S.A. Arriel 2 TI No. 292 72 2850, Version A, dated November 29, 2013, which you must also use to do the vibration check.

(iv) The reporting requirements in paragraphs 6.A.(1)(c), 6.A.(2)(b), and

6.B.(1)(c), and the requirement to return module M01 in paragraph 6.B.(2)(b)*2* of Turbomeca S.A. MSB No. 292 72 2849, Version B, dated November 25, 2013, are not required by this AD.

(2) For all affected Turbomeca S.A. engines, during each engine shop visit after the effective date of this AD, perform a vibration check of the AGB 41/23-tooth bevel gear meshing. Guidance on performing the vibration check during an engine shop visit can be found in the service information listed in paragraph (i)(3) in the Related Information section.

(3) If the AGB does not pass the vibration check required by paragraphs (e)(1) or (e)(2) of this AD, replace the AGB with a part eligible for installation.

(f) Credit for Previous Action

If you performed a vibration check of the AGB before the effective date of this AD using Turbomeca S.A. MSB No. 292 72 0839, Version A, dated September 9, 2013; or MSB No. 292 72 2849, Version A, dated September 9, 2013, or during an engine shop visit per paragraph (e)(2) of this AD, you met the initial inspection requirement of paragraph (e)(1) of this AD.

(g) Definition

For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges. The separation of engine flanges solely for the purpose of transportation without subsequent engine maintenance does not constitute an engine shop visit.

(h) Alternative Methods of Compliance (AMOCs)

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

(i) Related Information

(1) For more information about this AD, contact Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7758; fax: 781–238–7199; email: *mark.riley@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2014–0036, dated February 11, 2014, for related information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0164.*

(3) Turbomeca Engine Test Bed Acceptance Test Specifications CCT No. 0292009400, Version T; CCT No. 0292019400, Version R; CCT No. 0292019690, Version I; CCT No. 029201530, Version K; CCT No. 0292019610, Version K; CCT No. 0292029450, Version J; CCT No. 0292029490, Version I; CCT No. 0292029440, Version I; CCT No. 0292029480, Version K; CCT No. 0292029520, Version H; CCT No. 0292029410, Version L; CCT No. 0292029530, Version H; or Turbomeca ID No. 383952; or Turbomeca RTD No. X 292 65 327 2, which are not incorporated by reference in this AD, can be obtained from Turbomeca S.A., using the contact information in paragraph (j)(3) of this AD. This service information provides guidance on performing the vibration check during an engine shop visit.

(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) Turbomeca S.A. Mandatory Service Bulletin (MSB) No. 292 72 0839, Version B, dated November 25, 2013.

(ii) Turbomeca S.A. MSB No. 292 72 2849, Version B, dated November 25, 2013.

(iii) Turbomeca S.A. Arriel 1 Technical Instruction (TI) No. 292 72 0839, Version E, dated February 20, 2014.

(iv) Turbomeca S.A. Arriel 1 TI No. 292 72 0840, Version A, dated November 29, 2013.

(v) Turbomeca S.A. Arriel 2 TI No. 292 72 2849, Version E, dated February 20, 2014.

(vi) Turbomeca S.A. Arriel 2 TI No. 292 72 2850, Version A, dated November 29, 2013.

(3) For Turbomeca S.A. service information identified in this AD, contact Turbomeca, S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; telex: 570 042; fax: 33 (0)5 59 74 45 15.

(4) You may view this service information at FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(5) You may view this service information 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 Burlington, Massachusetts, on September 15, 2014.

Colleen M. D'Alessandro,

Assistant Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2014–23353 Filed 9–30–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0424; Directorate Identifier 2014–NM–003–AD; Amendment 39–17976; AD 2014–20–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. This AD was prompted by reports of an incorrectly assembled check tee fitting used in fire extinguishing (FIREEX) distribution lines. This AD requires inspecting to determine the part number and for all affected check tee fittings measuring for correct depth, and replacing if necessary. We are issuing this AD to detect and correct faulty check tee fittings, which will reduce fire extinguishing protection.

DATES: This AD becomes effective November 5, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 5, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0424* 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 Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.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: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7318; fax 516–794–5531.

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 Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. The NPRM published in the **Federal Register** on July 1, 2014 (79 FR 37246).

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2013–41, dated December 30, 2013 (referred to

after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition on certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. The MCAI states:

A check tee fitting used in the aeroplane fire extinguishing (FIREEX) distribution lines, was discovered by another airframe manufacturer as being incorrectly assembled. A properly assembled check tee fitting normally contains one check ball, however the affected fitting contained two check balls. The FIREEX manufacturer advised Bombardier that this condition may be present on aeroplane models BD–700–1A10 and BD–700–1A11.

Testing has verified that incorrect installation of the additional check ball in the fitting reduces the flow rate of the extinguishing agent. There are three check tee fittings installed on the BD–700–1A10 and BD–700–1A11 aeroplanes, one for each engine and one for the auxiliary power unit. Faulty fittings will reduce fire extinguishing protection at the affected locations.

Bombardier has issued several Alert Service Bulletins (ASBs) to identify, inspect and replace if required, all affected fittings. This [Canadian] AD mandates incorporation of the applicable Bombardier ASBs to rectify this problem.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0424-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 37246, July 1, 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.

We have become 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 the 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 actions must be accomplished using a method approved by the FAA, TCCA, or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DAO, the approval must include the DAO-authorized signature. The DAO signature indicates that the data and information contained in the document are TCCA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DAO-authorized signature approval are not TCCA-approved, unless TCCA 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.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''design approval holder (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.

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 37246, July 1, 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 37246, July 1, 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 57 airplanes 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. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $4,845, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 1 work-hour, for a cost of $85 per tee fitting. We have no way of determining the number of aircraft that might need this action.

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-2014-0424;* 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):

2014–20–03 Bombardier, Inc.: Amendment 39–17976. Docket No. FAA–2014–0424; Directorate Identifier 2014–NM–003–AD.

(a) Effective Date

This AD becomes effective November 5, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category, serial numbers 9002 through 9500 inclusive, and 9998.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire Protection.

(e) Reason

This AD was prompted by reports of an incorrectly assembled check tee fitting used in fire extinguishing (FIREEX) distribution lines. We are issuing this AD to detect and correct faulty check tee fittings, which will reduce fire extinguishing protection.

(f) Compliance

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

(g) Part Number Identification

Within 100 flight hours or 180 days, whichever occurs first after the effective date of this AD, inspect to determine the part number (P/N) of the FIREEX check tee fitting, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in paragraph (g)(1), (g)(2), (g)(3), or (g)(4) of this AD.

(1) Bombardier Alert Service Bulletin A700–1A11–26–003, dated April 18, 2013 (for Model BD–700–1A11 (BD–700) airplanes having S/Ns 9127 through 9383 inclusive; 9389 through 9400 inclusive, 9404 through 9431 inclusive, and 9998).

(2) Bombardier Alert Service Bulletin A700–26–010, dated April 18, 2013 (for Model BD–700–1A10 (BD–700) airplanes having S/Ns 9002 through 9312 inclusive, 9314 through 9380 inclusive, and 9384 through 9429 inclusive).

(3) Bombardier Alert Service Bulletin A700–26–5002, dated April 18, 2013 (for Model BD–700–1A11 (BD–700) airplanes having S/Ns 9386, 9401, and 9445 through 9498 inclusive).

(4) Bombardier Alert Service Bulletin A700–26–6002, dated April 18, 2013 (for Model BD–700–1A10 (BD–700) airplanes having S/Ns 9313, 9381, and 9432 through 9500 inclusive).

(h) Measurement and Replacement

If any inspection specified in paragraph (g) of this AD reveals any check tee fitting having P/N 446651 and S/N 062 through 070 inclusive, 117 through 133 inclusive, 3728 through 3731 inclusive, 3733 through 3760 inclusive, or 3762 through 3776 inclusive: Within 100 flight hours or 180 days, whichever occurs first after the effective date of this AD, measure the depth of the inlet fitting of the check tee, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in paragraph (g)(1), (g)(2), (g)(3), or (g)(4) of this AD. If the check tee depth is less than 1.70 inches (4.32 cm), before further flight, replace the check tee in accordance with the Accomplishment Instructions of the applicable service bulletin identified in paragraph (g)(1), (g)(2), (g)(3), or (g)(4) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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, New York ACO, ANE–170, Engine and Propeller Directorate, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–41, dated December 30, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0424-0002.*

(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) Bombardier Alert Service Bulletin A700–1A11–26–003, dated April 18, 2013.

(ii) Bombardier Alert Service Bulletin A700–26–010, dated April 18, 2013.

(iii) Bombardier Alert Service Bulletin A700–26–5002, dated April 18, 2013.

(iv) Bombardier Alert Service Bulletin A700–26–6002, dated April 18, 2013.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.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 September 19, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–22978 Filed 9–30–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0792; Directorate Identifier 2013–NM–118–AD; Amendment 39–17979; AD 2014–20–06]

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, and Model 777 airplanes. This AD was prompted by testing reports on certain Honeywell phase 3 display units (DUs). These DUs exhibited susceptibility to radio frequency emissions in WiFi frequency bands at radiated power levels below the levels that the displays are required to tolerate for certification of WiFi system installations. The phase 3 DUs provide primary flight information including airspeed, altitude, pitch and roll attitude, heading, and navigation information to the flightcrew. This AD requires replacing the existing phase 3 DUs with phase 1, phase 2, or phase 3A DUs, and for certain replacement DUs, installing new DU database software. We are issuing this AD to prevent loss of flight-critical information displayed to the flightcrew during a critical phase of flight, such as an approach or takeoff, which could result in loss of airplane control at an altitude insufficient for recovery, or controlled flight into terrain.

DATES: This AD is effective November 5, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 5, 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–2013–0792; 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: Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6472; fax: 425–917–6590; email: *jeffrey.w.palmer@faa.gov.*

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 all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, and Model 777 airplanes. The NPRM published in the **Federal Register** on September 24, 2013 (78 FR 58487). The NPRM was prompted by testing reports on certain Honeywell phase 3 DUs. These DUs exhibited susceptibility to radio frequency emissions in WiFi frequency bands at radiated power levels below the levels that the displays are required to tolerate for certification of WiFi system installations. The phase 3 DUs provide primary flight information including airspeed, altitude, pitch and roll attitude, heading, and navigation information to the flightcrew. The NPRM proposed to require replacing the existing phase 3 DUs with new phase 3A DUs and installing new DU database software. We are issuing this AD to prevent loss of flight-critical information displayed to the flightcrew during a critical phase of flight, such as an approach or takeoff, which could result in loss of airplane control at an altitude insufficient for recovery, or controlled flight into terrain.

Clarification of Cause of Unsafe Condition

The cause of the unsafe condition stated in the Discussion section of this AD is a known susceptibility of the Phase 3 DUs to RF transmissions inside and outside of the airplane. This susceptibility has been verified to exist in a range of RF spectrum (mobile satellite communications, cell phones, air surveillance and weather radar, and other systems), and is not limited to WiFi transmissions.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (78 FR 58487, September 24, 2013), and the FAA's response to each comment.

Request To Change Applicability

Three commenters requested that we revise the applicability. A4A requested that we change the applicability to address only airplanes that have phase 3 DUs installed. Mr. Philipp Schmid requested that the applicability only address airplanes that have a WiFi system installed in the cabin. All Nippon Airways (ANA) requested that we revise applicability paragraph (c) of the proposed AD (78 FR 58487, September 24, 2013) to refer to the airplanes identified in Boeing Special Attention Service Bulletin 737–31–1471, dated November 29, 2012; and Boeing Special Attention Service Bulletin 777–31–0187, dated November 29, 2012.

A4A stated that the FAA is making the NPRM (78 FR 58487, September 24, 2013) applicable to all Model 737 NG and Model 777 series airplanes, regardless of the operator's intent to install a Wi-Fi system. A4A expressed that in paragraph (e) of the proposed AD, the FAA acknowledges that the unsafe condition is directly related to electromagnetic interference (EMI) characteristics exhibited at specific frequency ranges related to Wi-Fi transmission. A4A stated that the phase 3 DUs have passed all applicable certification testing required for approval and use on transport category airplanes, including the DO–160 environmental standards. A4A asserted

that the phase 3 display units have proven to be reliable under normal operating conditions. A4A also stated that the failure mode identified by the NPRM is specific to an additional test procedure prescribed by DO–294C that is required only as part of the certification requirements of an operator-installed Wi-Fi system.

ANA stated that the those airplanes not specified in Boeing Special Attention Service Bulletin 737–31–1471, dated November 29, 2012; and Boeing Special Attention Service Bulletin 777–31–0187, dated November 29, 2012; were/will be delivered with the requested changes in production.

We partially agree with the commenters' requests. We recognize that operators will not be able to comply with the proposed replacement specified in paragraph (g) of the proposed AD (78 FR 58487, September 24, 2013) if airplanes do not have any phase 3 DUs installed. Therefore, we have revised paragraph (g) of this AD to allow operators to inspect to determine if phase 3 DUs are installed and if no phase 3 DUs are installed, no further action is necessary.

The intent of this AD is to remove all DUs with an unsafe condition from all Model 737NG and Model 777 series airplanes, regardless of whether or not the airplanes are listed in the effectivity of Boeing Special Attention Service Bulletin 737–31–1471, dated November 29, 2012; and Boeing Special Attention Service Bulletin 777–31–0187, dated November 29, 2012.

DUs can be rotated among other airplanes. As noted by Boeing, the phase 3 DU's are interchangeable and intermixable with earlier versions of DU's on 737NG and 777 airplanes, and may have been installed on any 737NG or 777 airplanes, and may be in operator spares inventory.

In regards to A4A's comment that phase 3 DUs have proven to be reliable under normal operating conditions, the testing that revealed the DU susceptibility was verified by inspection of the phase 3 DU qualification test reports provided by the DU manufacturer. The intent of this AD is to eliminate this known susceptibility of the phase 3 DUs to RF transmissions, including those from sources outside the airplane. This susceptibility is not limited to WiFi transmissions, but has been verified to exist in a range of the RF spectrum used by mobile satellite communications, cell phones, air surveillance and weather radar, and other systems. The phase 3 displays that failed the test did so substantially below the RF immunity levels set forth in paragraph 1 of the ''High Intensity Radiated Fields (HIRF)'' section of the preamble to 737 Special Condition 25–ANM–132, dated September 26, 1997; and paragraph 1 of the HIRF discussion in the preamble to 777 Special Condition 25–ANM–78, dated November 10, 1993. Under the provisions of paragraph (h) of this AD, we will consider requests for approval of an AMOC if sufficient data are submitted to substantiate that the DU change is not necessary. We have not changed this AD in this regard.

Request To Withdraw the NPRM (78 FR 58487, September 24, 2013)

Virgin Australia (VOZ), Air France (AFA), Ryanair, Airlines for America (A4A), and Honeywell requested that we withdraw or review the need for the NPRM (78 FR 58487, September 24, 2013).

VOZ stated that during testing of the WiFi inflight entertainment system on the VOZ Model 737NG fleet, it noted that the DU blanking occurred only when the WiFi radiated power source (set-up in the flight deck) was increased to a high level. VOZ also stated that under normal operating conditions of the WiFi radiated power, there was no blanking of the DU, but interference was present only at a certain frequency. VOZ commented that as part of the WiFi supplemental type certificate (STC), a decal is installed in the flight deck that states that WiFi is not to be used when airplane engines are running for the purpose of flight, and flight operation procedures also restrict transmitting devices in the flight deck. We infer that VOZ requested that we withdraw the NPRM (78 FR 58487, September 24, 2013).

AFA stated that since April 2013, AFA and Koninklijke Luchtvaart Maatschappij N.V.(KLM) have operated two Model 777 airplanes equipped with WiFi that have had no DU problems. AFA commented that the WiFi signal is available on the flight deck, but its use is prohibited. AFA suggested that it is likely that the WiFi signal level is too low to cause the DU blanking problems that led to the NPRM (78 FR 58487, September 24, 2013). AFA also stated that on its other Model 777 airplanes (85 airplanes equipped with phase 2 or 3 DUs with no WiFi), neither AFA nor KLM, have experienced DU problems. AFA stated that the DU discrepancies are caused by WiFi interference directly associated with design defects of the phase 3 DU, and since replacement cost is at customer expense, estimated more than $2,000 per DU, the cost to comply with the NPRM for the quantity of phase 3 DUs in service in both fleets is not reasonable or justified.

Ryanair and Honeywell commented that testing performed on the phase 3 DUs concluded that a Federal Communications Commission (FCC) compliant WiFi radiating device does not result in interference on the phase 3 DU unless the transmitting device is within 1 meter of the DU. Ryanair and Honeywell stated that is not possible for FCC compliant WiFi devices to cause interference to the DUs from outside the airplane during flight and that intentional emitting devices by passengers are prohibited from use on an airplane, and in any case will always be more than the required 1 meter distance from the DU, and consequently cannot cause interference to the DUs. Ryanair and Honeywell also stated that the installation and operation of any intentional emitting devices in the cockpit during flight is subject to regulatory approval and such regulatory approval process includes electromagnetic interference testing at WiFi frequencies. Ryanair asserted that requiring the NPRM (78 FR 58487, September 24, 2013) actions on all airplanes, irrespective of the installation or operation of WiFi systems in the cockpit, is imposing a high, and unnecessary, financial burden on operators.

Honeywell stated that instead of requiring all phase 3 DUs to be replaced or modified, as proposed by the NPRM (78 FR 58487, September 24, 2013), the need for modifying the DUs should only be considered in the process for authorizing the use of WiFi devices in the cockpit. Honeywell explained that since the cockpit is a controlled environment, the airline has the opportunity to select acceptable devices and establish procedures for their use and storage that can mitigate any interference risk. Honeywell stated that Delta Airlines has been safely operating WiFi-enabled Apple iPads in its flight decks, including those with phase 3 DUs, based on a waiver granted by the FAA.

Honeywell also stated that they have performed an assessment of continued operational safety (COS) risk to an external high intensity radiated field (HIRF) condition using the methods defined in the Transport Airplane Risk Assessment Methodology (TARAM) Handbook published by the FAA, Transport Airplane Directorate, and that its TARAM analysis concluded that the COS risk from external HIRF condition falls well within the FAA's acceptable risk zone.

A4A requested that we withdraw the NPRM (78 FR 58487, September 24, 2013) because it believes that the risk is not adequately substantiated, and that

conflicting data exists questioning the susceptibility of the DUs to WiFi interference. A4A also commented that the economic impact of the NPRM actions is far greater than the cost estimate stated in the NPRM and should be acknowledged and weighed against what it characterized as questionable risk.

We do not agree with the commenters' request to withdraw the NPRM (78 FR 58487, September 24, 2013). The testing that revealed the DU susceptibility to WiFi interference was verified by inspection of the phase 3 DU qualification test reports provided by the DU manufacturer. The intent of this final rule is to eliminate this known susceptibility of the phase 3 DUs to radio frequency (RF) transmissions, including those from sources outside the airplane. The phase 3 displays that failed testing did so substantially below the RF immunity levels set forth in paragraph 1 of the HIRF section of the preamble to 737 Special Condition 25–ANM–132, dated September 26, 1997 (*http://www.gpo.gov/fdsys/pkg/FR-2009-09-03/pdf/E9-21299.pdf*); and paragraph 1. of the HIRF discussion in the preamble to 777 Special Condition 25–ANM–78, dated November 10, 1993 (*http://www.gpo.gov/fdsys/pkg/FR-2004-11-08/pdf/04-24847.pdf*).

As part of our assessment of the safety issue in accordance with our established safety process, the FAA also performed a TARAM analysis of the issue with the assistance of the airplane manufacturer. This analysis did not agree with Honeywell's assessment. The FAA issued an operating rule exemption to Delta Airlines for use of iPads on the flight deck because it was in the public interest to do so in order to enable testing and evaluation of other aviation safety-enhancing technology the FAA was researching. The FAA's exemption was granted to Delta based on extensive testing and supporting data, use of specially trained flight crews, and establishment of appropriate operating procedures to ensure safe flight operations during the time period of the exemption. The NPRM (78 FR 58487, September 24, 2013) will not be withdrawn because it meets the intent of correcting the unsafe condition listed in the SUMMARY section. Under the provisions of paragraph (h) of this AD, we will consider requests for approval of an alternative method of compliance (AMOC) if sufficient data are submitted to substantiate that the DU change is not necessary. We have not changed this AD in this regard.

Request To Disclose Underlying Data in Support of the NPRM (78 FR 58487, September 24, 2013)

A4A requested that we fully present our underlying data in support of the NPRM (78 FR 58487, September 24, 2013) risk allegation. Mr. Philipp Schmid stated that WiFi operational limitations should be considered in the risk assessment and that to his knowledge, WiFi systems must be disabled during the critical phases of flight such as an approach or take-off.

A4A stated that the FAA does not disclose in the NPRM (78 FR 58487, September 24, 2013), the nature of DU testing conducted nor its source, and that a rulemaking of this magnitude must be supported in incontrovertible data from appropriate and reliable sources.

A4A submitted information from Southwest Airlines (SWA) that stated that SWA collected data from both certified lab and engineering designed airplane ground tests indicating that the Honeywell phase 3 DUs are not susceptible at or below the energy levels required for certification. SWA also stated that it has performed extensive testing with respect to susceptibility of the Honeywell phase 3 DUs in the WiFi bands outlined in the NPRM (78 FR 58487, September 24, 2013) and that this testing indicated that significant safety margins are available; and that there are no threat susceptibilities recorded at or below the WiFi certification levels. SWA also commented that it has flown 2,375,481 hours with 435 airplanes since WiFi system installation with no un-attributable DU blanking or blinking defects that would be a consideration under the NPRM. SWA concluded that ''this experience indicates a negligible level of risk.''

A4A submitted information from United Airlines (UAL). UAL explained that an alternate means of assuring an equivalent level of safety while a replacement program is undertaken has been accepted by FAA at UAL. UAL stated that it has been granted certification limitations which allow operation of the WiFi system provided that the flight deck is placarded to disallow use of transmitting portable electronic devices (TPED) when engines are operating for purposes of flight. UAL stated it believes such limitations are the appropriate means to address the unsafe condition because they apply directly to the certification of airplane with an operator-installed WiFi system. A4A stated that it agrees with UAL that such a restriction provides an equivalent level of safety, for if it did not, it would not have been approved by the FAA.

We do not agree with the commenters' requests. We do not agree to share the underlying data in the AD. An AD is not an appropriate vehicle for sharing proprietary data.

The susceptibility of phase 3 DUs to RF transmissions was initially identified during a WiFi STC installation by an operator and a WiFi vendor and reported to the FAA. As a result of this discovery, we performed a risk assessment for in-service airplanes equipped with phase 3 DUs using our established COS process, which determined that an AD action was warranted for this issue. In addition, Boeing did an independent safety review and also determined that the DU blanking was a safety issue using its own risk assessment process.

Although various entities (operators, vendors, etc.) may have done testing which may seem to contradict our findings, the WiFi tests conducted during the above referenced STC project failed to meet RF immunity level requirements. The testing that revealed the DU susceptibility was further verified by inspection of the phase 3 DU qualification test reports provided to the FAA by the DU manufacturer.

The intent of this AD is to eliminate this known susceptibility of the phase 3 DUs to RF transmissions, including those from sources outside the airplane. The phase 3 displays that failed testing did so substantially below the RF immunity levels set forth in paragraph l of the ''High Intensity Radiated Fields (HIRF)'' section of the preamble to 737 Special Condition 25–ANM–132, dated September 26, 1997; and paragraph l. of the HIRF discussion in the preamble to 777 Special Condition 25–ANM–78, dated November 10, 1993.

We do not agree that no problems have occurred on in-service airplanes, since the WiFi STC testing that disclosed this susceptibility was conducted on an in-service airplane equipped with phase 3 DUs. With respect to operational limitations providing an acceptable level of safety, we approved certain STCs with such limitations as a means of compliance until a permanent solution was available. However, we intended those limitations as interim action until permanent corrective actions for the unsafe condition became available for the baseline airplanes. We do not consider it adequate to leave those operating limitations in place permanently as the sole corrective action for the unsafe condition.

Under the provisions of paragraph (h) of this AD, we will consider requests for

approval of an AMOC if sufficient data are submitted to substantiate that the DU change is not necessary. We have not changed this final rule in this regard.

Request To Change Compliance Time

A4A requested that we revise the compliance time in the proposed AD (78 FR 58487, September 24, 2013) from 60 months to 72 months, and that we recognize system redundancy when considering its compliance time request.

A4A stated that multiple redundancies associated with the display system are designed to assure the flight crew always has access to critical information, and even in the event three DUs become inoperative, all normal primary flight display, navigation display, terrain guidance, and engine instrument information will still be displayed to the pilot. A4A also stated that there are vastly more affected units than were identified by the proposed AD (78 FR 58487, September 24, 2013). A4A stated that two of its largest operators alone account for over one thousand affected DUs. A4A contends that a 72-month compliance time is a reasonable time to comply with the NPRM and is an appropriate time given the risk.

We partially agree with the commenter. We agree with the commenter's statement that there are more units and airplanes affected than those listed in the proposed AD (78 FR 58487, September 24, 2013) because this has now been verified with the manufacturer's service information and comments to the NPRM. We disagree with extending the compliance time beyond 60 months. Our risk assessment considered system redundancy. However, along with DU susceptibility to RF transmissions, we have also considered other risk factors such as human factors, pilot workload, and phase of flight, etc. It is possible for all primary flight display units to fail at once during a critical phase of flight such as a takeoff or approach and landing. This could lead to loss of control of the airplane at an altitude insufficient for recovery, or controlled flight into terrain or obstacles, the availability of standby instruments in such a situation notwithstanding.

Our compliance time is based on a detailed and in-depth risk assessment by the FAA and Boeing that has determined that the requirements of this AD must be accomplished within 60 months to mitigate the unsafe condition in the interest of the safety of the flying public. We recognize that in some cases, it may be necessary to accomplish the AD requirements outside normal scheduled maintenance cycles, and that some level of additional cost and/or lost revenue may result in such cases. However, the risk assessment indicates 60 months is an appropriate compliance time that will ensure an acceptable level of continued operational safety for the Model 737NG and Model 777 series airplane fleets. However, according to the provisions of paragraph (h) of this AD, we may consider requests to adjust the compliance time if the request includes data that prove that the new compliance time would provide an acceptable level of safety. We have not changed this AD in this regard.

Request To Change Compliance Method

Boeing requested that we remove Boeing Special Attention Service Bulletin 737–31–1471, dated November 29, 2012; and Boeing Special Attention Service Bulletin 777–31–0187, dated November 29, 2012; from the terminating action, since terminating action should include alternate part number DUs. Or, alternatively, Boeing recommended that operators be allowed to replace at a minimum, the phase 3 DUs and corresponding database software with earlier or newer certified units installed in the left outboard, right outboard and upper center DU positions. Boeing stated that earlier versions of intermixable/interchangeable DUs also do not exhibit HIRF susceptibility, so the terminating action could include replacement of phase 3 DU's with earlier certified units.

Boeing also requested that we revise the language in the NPRM (78 FR 58487, September 24, 2013) to specify that terminating action is to remove phase 3 DUs from Model 737NG and Model 777 series airplanes, with replacement of any other DU certified for the Model 737NG and Model 777 series airplanes. Boeing stated that the NPRM should not require the installation of the phase 3A DUs, but instead only require that the phase 3 DUs be replaced or not installed on any airplane.

We partially agree with the commenter's requests. We agree that terminating action is to replace all phase 3 DUs with certain other DUs certified for the Model 737NG and Model 777 series airplanes. We have revised this final rule so that it does not require the installation of phase 3A DUs, but instead only requires that the phase 3 DUs be replaced with the following approved DU part numbers that do not have the unsafe condition: Phase 1, phase 2, and phase 3A DUs. Phase 1 and phase 2 DUs do not have the RF susceptibility that has been identified in the phase 3 DUs, are intermixable and interchangeable with the phase 3 DUs, and therefore, are an acceptable option for replacement of the phase 3 DUs to correct the unsafe condition. The intent of this AD is to remove all DUs with an unsafe condition and replace them with an acceptable alternative.

We disagree with the request to remove the references to Boeing Special Attention Service Bulletin 737–31–1471, dated November 29, 2012; and Boeing Special Attention Service Bulletin 777–31–0187, dated November 29, 2012; from the terminating action. Installing phase 3A DUs as specified in these service bulletins is an acceptable option for correcting the identified unsafe condition.

We have revised paragraph (g) of this AD to require replacing phase 3 DUs with phase 1, phase 2, or phase 3A DUs.

Request To Allow DU Upgrade

Honeywell requested that we allow for phase 3 DUs to be upgraded to phase 3A DUs, rather than replacing with new phase 3A DUs. Honeywell stated that phase 3 DUs can be upgraded to phase 3A DUs via a modification kit and rework process defined in service information that has previously been provided to operators.

We agree with the commenter's request to allow for phase 3 DUs to be upgraded to phase 3A DUs. We have removed the requirement in paragraph (g) of this AD to replace phase 3 DUs with ''new'' phase 3A DUs. Either new or modified phase 3A DUs may be installed.

Request To Revise Cost Estimate

Several commenters requested that we revise the cost estimate in the NPRM (78 FR 58487, September 24, 2013). A4A requested that we revise the cost analysis to include all affected airplanes and DUs in the U.S. registry, and increase the per-airplane replacement time to three hours. A4A stated that the FAA states that the NPRM affects 157 airplanes of U.S. registry, encompassing 942 DUs. A4A commented that UAL alone operates 150 such airplanes, exposing a significant error in estimation. A4A also stated that Honeywell indicates there are 10,100 in-service phase 3 DUs affected; and that using the NPRM figure of $1,700 parts cost per DU ($10,200/six units per airplane), the parts cost alone rises to $17,170,000, or more than ten times the stated total cost of compliance. A4A also commented that while the NPRM estimates two hours per airplane for DU replacement, one carrier estimates three hours, a 50 percent increase in labor hours.

Ryanair requested that we review the cost of compliance. Ryanair stated that

the estimated cost of compliance for the U.S. carriers seems to be a gross underestimate of the actual figure. Ryanair explained that it has 707 phase 3 DUs in its fleet of 737–800s. This is approximately the same number the FAA is assuming for the entire US fleet of Model 737NG series airplanes.

Boeing requested that we review the estimated costs table for the number of affected airplanes for both Model 737 and Model 777 series airplanes; and that we include the cost of updating phase 3 DUs which may have been installed on airplanes not delivered with phase 3 DUs as replacement units for failed DUs, and spare phase 3 DUs provided to airlines. Boeing explained that phase 3 DUs are interchangeable and intermixable with earlier versions of DUs on Model 737NG and Model 777 series airplanes, and may have been installed on any Model 737NG and Model 777 series airplane, and may be in operator spares inventory. Boeing also stated that a review of Boeing Special Attention Service Bulletin 737–31–1471, dated November 29, 2012; and Boeing Special Attention Service Bulletin 777–31–0187, dated November 29, 2012; shows an effectivity of 1,326 U.S. registered airplanes.

We partially agree with the commenters' requests. We agree with revising the estimated U.S. fleet size in the Cost of Compliance section in this final rule. Boeing has indicated in its comments that the number of affected U.S. airplanes is greater than the number of airplanes estimated in the NPRM (78 FR 58487, September 24, 2013). We disagree with revising the estimated labor hours. The labor hour estimate has been provided by the manufacturer. A4A's comment indicates that only one operator estimates that the labor hour estimate should be increased. We do not account for individual operator differences in the calculation of total labor hour estimates. We also disagree with considering airplanes that may have had phase 3 DUs installed after production as we have no way of estimating how many airplanes may have had this modification. We have changed the cost estimate in this final rule to reflect 1,149 Model 737 airplanes and 177 Model 777 airplanes.

Comment Regarding Certification Process

Mr. Philipp Schmid commented that in today's world with more and more transmitters in the cabin and on the ground, the FAA should have more carefully taken into account the design and system integrations of line replaceable units for immunity to EMI.

We acknowledge the commenter's concern. We make efforts to ensure that systems and equipment are immune to EMI effects during certification. We recently published rules with compliance requirements for HIRF immunity (e.g. section 25.1317 of Title 14, Code of Federal Regulations (14 CFR 25.1317)) (*http://www.gpo.gov/fdsys/pkg/CFR-2011-title14-vol1/pdf/CFR-2011-title14-vol1-sec25-1317.pdf*). However, we continue to conduct monitoring and surveillance of approved designs in service and require accomplishment of corrective actions for unsafe conditions when needed to ensure continued operational safety. This AD accomplishes continued operational safety by addressing an identified unsafe condition. The commenter did not request any changes to the NPRM (78 FR 58487, September 24, 2013). We have not changed this AD in this regard.

Clarification Regarding the Installation of Winglets

Aviation Partners Boeing (APB) stated that the installation of winglets per Supplemental Type Certificate (STC) ST00830SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/E3615811C4A7D87B86257C1C00720D67?OpenDocument&Highlight=st00830se*) does not affect the accomplishment of the manufacturer's service instructions.

We agree with APB's statement that the installation of winglets as specified in STC ST00830SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/E3615811C4A7D87B86257C1C00720D67?OpenDocument&Highlight=st00830se)* does not affect accomplishment of the requirements of this AD, and for airplanes on which STC ST00830SE is installed, an alternative method of compliance (AMOC) approval request to account for the installation of that STC is not necessary to comply with the requirements of section 39.17 of the Federal Aviation Regulations (14 CFR 39.17).

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 58487, September 24, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the the NPRM (78 FR 58487, September 24, 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 1,326 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
Replacement (1,149 Model 737 airplanes)	2 work-hours × $85 per hour = $170	$10,200	$10,370	$11,915,130
Replacement (177 Model 777 airplanes)	3 work-hours × $85 per hour = $255	10,200	10,455	1,850,535

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):

2014–20–06 The Boeing Company: Amendment 39–17979; Docket No. FAA–2013–0792; Directorate Identifier 2013–NM–118–AD.

(a) Effective Date

This AD is effective November 5, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes.

(2) Model 777–200, 777–200LR, 777–300, 777–300ER, and 777F series airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 31, Instruments.

(e) Unsafe Condition

This AD was prompted by testing reports on certain Honeywell phase 3 display units (DUs). These DUs exhibited susceptibility to radio frequency emissions in WiFi frequency bands at radiated power levels below the levels that the displays are required to tolerate for certification of WiFi system installations. The phase 3 DUs provide primary flight information, including airspeed, altitude, pitch and roll attitude, heading, and navigation information, to the flightcrew. We are issuing this AD to prevent loss of flight-critical information displayed to the flightcrew during a critical phase of flight, such as an approach or takeoff, which could result in loss of airplane control at an altitude insufficient for recovery, or controlled flight into terrain.

(f) Compliance

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

(g) Inspection, Software Installation, and DU Installation

Within 60 months after the effective date of this AD: Inspect to determine if any phase 3 DUs are installed. If any phase 3 DUs are installed, within 60 months after the effective date of this AD, do the applicable actions required by paragraph (g)(1) or (g)(2) of this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if the phase number of the DUs can be conclusively determined from that review.

(1) For Model 737 airplanes: Remove all phase 3 common display system (CDS) DUs and replace with phase 1, phase 2, or phase 3A CDS DUs. If any phase 3 CDS DUs are replaced with phase 3A CDS DUs, replace the phase 3 CDS DUs and install new database software into the display electronics units, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–31–1471, dated November 29, 2012.

(2) For Model 777 airplanes: Remove all phase 3 DUs and replace with phase 1, phase 2, or phase 3A DUs. If any phase 3 DUs are replaced with phase 3A DUs, replace the phase 3 DUs and install the DU database software into the left and right airplane information management system core processor module/graphics generator, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–31–0187, dated November 29, 2012.

(h) 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 the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(i) Related Information

For more information about this AD, contact Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6472; fax: 425–917–6590; email: *jeffrey.w.palmer@faa.gov.*

(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) Boeing Special Attention Service Bulletin 737–31–1471, dated November 29, 2012.

(ii) Boeing Special Attention Service Bulletin 777–31–0187, dated November 29, 2012.

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

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

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

Issued in Renton, Washington, on September 19, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–23231 Filed 9–30–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0672; Directorate Identifier 2013–NM–058–AD; Amendment 39–17975; AD 2014–20–02]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 767–200, –300, –300F, and –400ER airplanes. This AD 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. This AD requires an inspection of the wing fuel tank access doors to determine whether impact-resistant access doors are installed in the correct locations, and to replace incorrectly installed doors with impact-resistant access doors. This AD also requires an inspection for stencils and index markers on impact-resistant access doors, and application of new stencils or index markers if necessary. In addition, this AD requires revising the maintenance program to incorporate changes to the airworthiness limitations section. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective November 5, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 5, 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–2013–0672; 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 supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 767–200, –300, –300F, and –400ER airplanes. The SNPRM published in the **Federal Register** on July 2, 2014 (79 FR 37681). We preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on August 12, 2013 (78 FR 48826). 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 to replace incorrectly installed doors with impact-resistant access doors. The NPRM also proposed to require an inspection for stencils and index markers on impact-resistant access doors, and application of new stencils or index markers if necessary. In addition, the NPRM proposed to require revising the maintenance program to incorporate changes to the airworthiness limitations section. 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. The SNPRM proposed to revise the NPRM by adding airplanes to the applicability. We are issuing this AD to prevent foreign object penetration of the fuel tank from uncontained engine failure or tire debris, 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. We have considered the comments received. Boeing and FedEx Express supported the SNPRM (79 FR 37681, July 2, 2014).

Conclusion

We reviewed the relevant data, considered the comments received, 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 SNPRM (79 FR 37681, July 2, 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 37681, July 2, 2014).

Costs of Compliance

We estimate that this AD affects 436 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 7 work-hours × $85 per hour = $595	$0	$595	$259,420
Maintenance program revision	1 work-hour × $85 per hour = $85	0	85	37,060

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	9 work-hours × $85 per hour = $765	0	765

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):

2014–20–02 The Boeing Company: Amendment 39–17975; Docket No. FAA–2013–0672; Directorate Identifier 2013–NM–058–AD.

(a) Effective Date

This AD is effective November 5, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes; certificated in any category; as identified in Boeing Service Bulletin 767–28–0105, Revision 1, dated February 6, 2013.

(d) Subject

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

(e) Unsafe Condition

This AD 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. We are issuing this AD to prevent foreign object penetration of the fuel tank from uncontained engine failure or tire debris, which could cause a fuel leak near an ignition source (e.g., hot brakes or engine nozzle), consequently leading to a fuel-fed fire.

(f) Compliance

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

(g) Inspections

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 767–28–0105, Revision 1, dated February 6, 2013.

(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.

(2) Do a general visual inspection of the left- and right-hand wing fuel tank impact-resistant access doors 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.

(h) Maintenance or Inspection Program Revision

Within 60 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate critical design configuration control limitation (CDCCL) Task 57–AWL–01, ''Impact-Resistant Fuel Tank Access Door,'' of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs) of Boeing 767 Maintenance Planning Data Document D622T001–9, Revision January 2013.

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

After accomplishing the revision 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 (k) of this AD.

(j) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 767–28–0105, dated January 12, 2012, which is not incorporated by reference in 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, and the approval must specifically refer to this AD.

(4) AMOCs for ADs 2008–11–01 R1, Amendment 39–16145 (74 FR 68515, December 28, 2009); 2010–06–10, Amendment 39–16234 (75 FR 15322, March 29, 2010); or 2011–25–05, Amendment 39–16881 (77 FR 2442, January 18, 2012); that meet the conditions specified in paragraphs (k)(4)(i) and (k)(4)(ii) of this AD are approved as AMOCs for the corresponding provisions of paragraph (h) of this AD.

(i) AMOCs that are approved after November 2, 2012.

(ii) AMOCS that include incorporation of CDCCL Task 57–AWL–01, ''Impact-Resistant Fuel Tank Access Door.''

(l) Related Information

(1) 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.*

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

(m) Material Incorporated by Reference

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

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

(i) Boeing Service Bulletin 767–28–0105, Revision 1, dated February 6, 2013.

(ii) Task 57–AWL–01, ''Impact-Resistant Fuel Tank Access Door,'' of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs) of Boeing 767 Maintenance Planning Data Document D622T001–9, Revision January 2013.

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

(4) 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.

(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 September 19, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–22979 Filed 9–30–14; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–73229]

Delegation of Authority to the Chief Financial Officer

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is amending its rules to delegate to the Chief Financial Officer the authority granted to the Commission by Section 21F(g)(4) of the Securities and Exchange Act of 1934 (''Exchange Act'') to request that the Secretary of the Treasury invest the portion of the Commission's whistleblower reward fund that, in its discretion, is not required to meet the current needs of the fund, and determine the maturities for those investments suitable to the needs of the fund. These changes are intended to streamline the operation of the Commission by delegating to staff certain routine financial responsibilities.

DATES: Effective September 29, 2014.

FOR FURTHER INFORMATION CONTACT: Kenneth Johnson, Chief Financial Officer, at (202) 551–5472 or Caryn Kauffman, Deputy Chief Financial Officer, at (202) 551–8834, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Discussion

Section 21F(g)(1) of the Exchange Act establishes the Securities and Exchange Commission Investor Protection Fund (''Fund''),[1] which is available to pay awards to whistleblowers (as provided in Section 21F(b)), and to fund certain activities of the Commission's Inspector General.[2] The Commission may request that the Secretary of the Treasury invest the portion of the Fund that is not, in the discretion of the Commission, required to meet the current needs of the Funds.[3] The Secretary of the Treasury must invest such funds in obligation of the United States, ''within maturities suitable to the needs of the funds of the Fund as determined by the Commission on the record.''[4]

The Commission is amending it rules to delegate to the Chief Financial Officer the authority, in accordance with section 21F(g)(4), to make requests to the Secretary of the Treasury to invest the Fund's monies that are not, in his or her discretion, required to meet the current needs of the Fund and to determine what maturities for these investments are suitable to the needs of the Fund.

The Office of Financial Management, headed by the Chief Financial Officer, is responsible for managing the financial matters of the Commission. In providing the Chief Financial Officer with the authority to perform these additional functions, this amendment is intended to streamline the efficient operation of the Commission.

II. Administrative Law Matters

The Commission has determined that these amendments relate solely to the agency's organization, procedure, or practice. Accordingly, the provisions of the Administrative Procedure Act regarding notice of proposed rulemaking and opportunity for public participation are not applicable.[5] The Regulatory Flexibility Act, therefore, does not apply.[6] Because these rules relate solely to the agency's organization, procedure, or practice and do not substantially affect the rights or obligations of non-agency parties, they are not subject to the Small Business Regulatory Enforcement Fairness Act.[7] Finally, these amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.[8] Further, because the amendments impose no new burdens on private persons, the Commission does not believe that the amendments will have any impact on competition for purposes of Section 23(a) (2) of the Exchange Act.

[1] 14 U.S.C. 78u–6(g)(1).

[2] 15 U.S.C. 78u–6(g)(2).

[3] 15 U.S.C. 78u–6(g)(4)(A).

[4] 15 U.S.C. 78u–6(g)(4)(B).

[5] 5 U.S.C. 553(b).

[6] 5 U.S.C. 601 through 612.

[7] 5 U.S.C. 804.

[8] 44 U.S.C. 3501 through 3520.

Accordingly, the amendments are effective October 1, 2014.

Statutory Authority

The amendments to the Commission's rules are adopted pursuant to 15 U.S.C. 77o, 77s, 77sss, 77d, 78d–1, 78d–2, 78w, 78ll(d), 78mm, 80a–37, 80b–11, and 7202.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

Text of Amendments

In accordance with the preamble, the Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

SUBPART A—ORGANIZATION AND PROGRAM MANAGEMENT

■ 1. The authority citation for part 200, Subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77*o,* 77s, 77sss, 77d, 78d–1, 78d–2, 78*o*–4, 78w, 78*ll*(d), 78mm, 80a–37, 80b–11, 7202, and 7211 *et seq.* unless otherwise noted.

* * * * *

■ 2. Section 200.30–13 is amended by adding paragraph (c) to read as follows.

§ 200.30–13 Delegation of authority to Chief Financial Officer.

* * * * *

(c) Pursuant to section 21F(g)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78u–6(g)(4)), the making of requests to the Secretary of the Treasury to invest the portion of the Securities and Exchange Commission Investor Protection Fund that is not, in his or her discretion, required to meet the current needs of the fund, and the determination of the maturities for those investments suitable to the needs of the fund.

By the Commission.

Dated: September 26, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23394 Filed 9–29–14; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 380

[Docket No. RM14–22–000; Order No. 800]

Revisions and Technical Corrections To Conform the Commission's Regulations to the Hydropower Regulatory Efficiency Act of 2013

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issues this Final Rule to amend its regulations to conform to the enacted Hydropower Regulatory Efficiency Act of 2013 (Hydropower Efficiency Act). Although the Commission has been complying with the Hydropower Efficiency Act, and made its compliance procedures available on its Web site, this Final Rule now formalizes the Commission's compliance procedures in its revised regulations on preliminary permits, small conduit hydroelectric facilities, and small hydroelectric power projects, and in a new subpart on qualifying conduit hydropower facilities. In addition, this Final Rule corrects grammatical and typographical errors. All revisions in this Final Rule are intended to be ministerial in nature.

DATES: *Effective Date:* This rule will become effective February 23, 2015.

FOR FURTHER INFORMATION CONTACT:

Carolyn Clarkin (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8563, *Carolyn.Clarkin@ferc.gov*.

Christopher Chaney (Technical Information), Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6778, *Christopher.Chaney@ferc.gov*.

Shana Murray (Technical Information), Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8333, *Shana.Murray@ferc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

1. By this Final Rule, the Commission is amending Parts 4 and 380 of its regulations to conform to the Hydropower Regulatory Efficiency Act of 2013 (Hydropower Efficiency Act or Act).[1] On August 9, 2013, Congress enacted the Hydropower Efficiency Act to encourage the hydropower industry to utilize non-power dams for electric generation, noting that roughly 97 percent of the 80,000 dams in the United States do not generate electricity. Congress recognized that it could encourage hydropower development by reducing costs and regulatory burden during the project study and licensing stages. To that end, the Hydropower Efficiency Act amends statutory provisions pertaining to preliminary permits and projects that are exempt from licensing.

A. Amendment Pertaining to Preliminary Permits

2. Under section 5 of the Federal Power Act (FPA),[2] the Commission can issue preliminary permits with maximum three-year terms. A preliminary permit preserves the right of the permit holder to have the first priority in applying for a license or exemption for the project site. During the preliminary permit term, permittees conduct investigations and secure necessary data to determine the feasibility of a proposed project and to prepare a development (i.e., license or exemption) application.

3. Before the new law, upon expiration of its permit, a permittee could apply for a successive preliminary permit to continue its feasibility studies. When such an application is filed, the Commission issues public notice and provides other entities an opportunity to file competing preliminary permit or development applications, of which the Commission would select the winning applicant using procedures outlined in its regulations.[3]

4. The Hydropower Efficiency Act amends section 5 of the FPA to give the Commission the authority to extend a preliminary permit once for not more than two additional years, allowing permittees more time to complete their feasibility studies without facing possible competition for the site from others.

B. Amendments Pertaining to Projects Exempt From Licensing

5. Certain projects may qualify for an exemption from the licensing requirements of Part I of the FPA: Specifically, small conduit hydroelectric facilities or small hydroelectric power projects. A small conduit hydroelectric facility (small

[1] Public Law 113–23 (2013).

[2] 16 U.S.C. 798 (2012), *amended by,* Hydropower Regulatory Efficiency Act of 2013, Public Law 113–23, 5, 127 Stat. 493 (2013).

[3] *See* 18 CFR 4.36–4.37 (2014).

conduit), as defined in section 30 of the FPA,[4] is an existing or proposed hydroelectric facility that utilizes for electric power generation the hydroelectric potential of a conduit, or any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity. A small hydroelectric power project, as defined in the Public Utilities Regulatory Policies Act of 1978 (PURPA),[5] is a project that utilizes for electric generation the water potential of either an existing non-federal dam or a natural water feature (e.g., natural lake, water fall, gradient of a stream, etc.) without the need for a dam or man-made impoundment.

6. Before the new law, small conduit exemptions could be located only on non-federal lands and only municipal small conduit exemptions could have an installed capacity of up to 40 megawatts (MW) (the maximum installed capacity of non-municipal projects was limited to 15 MW). To increase the number of projects eligible for small conduit exemptions, the Act amends section 30 of the FPA [6] to allow small conduit exemptions to be located on federal lands, and to increase the maximum installed capacity for all small conduit exemptions to 40 MW. Similarly, the Hydropower Efficiency Act increases the number of projects eligible for small hydroelectric power project exemptions. Previously, small hydroelectric power projects could not have an installed capacity that exceeded 5 MW. Now, pursuant to the Act's amendment to section 405 of PURPA,[7] small hydroelectric power projects may have a maximum installed capacity of up to 10 MW.

7. In addition to its amendments of existing exemptions, the Hydropower Efficiency Act creates a subset of small conduit exemptions, called ''qualifying conduit hydropower facilities,'' which are not required to be licensed under Part I of the FPA. A qualifying conduit hydropower facility is a facility that meets the following qualifying criteria: (1) The facility would be constructed, operated, or maintained for the generation of electric power using only the hydroelectric potential of a non-federally owned conduit, without the need for a dam or impoundment; (2) the facility would have a total installed capacity that does not exceed 5 MW; and (3) the facility is not licensed under, or exempted from, the license requirements in Part I of the FPA on or before the date of enactment of the Hydropower Efficiency Act (i.e., August 9, 2013). To obtain a determination that a project is a qualifying conduit hydropower facility, an entity must file with the Commission a notice of its intent to construct the facility that demonstrates the facility meets the qualifying criteria discussed above.

C. Revised Regulations

8. By this Final Rule, the Commission is conforming its regulations to the Hydropower Efficiency Act. Nevertheless, the Commission has complied with the requirements of the Act since its enactment. The Commission has issued two-year extensions to preliminary permit holders, granted a small conduit exemption on federal lands, and issued conduit facility determinations on whether proposed projects are qualifying conduit hydropower facilities. The Commission's compliance procedures are available on its Web site at *http://www.ferc.gov/industries/hydropower.asp.*[8]

9. In this Final Rule, the Commission modifies and deletes language on preliminary permits and exemptions in Parts 4 and 380 of its regulations. Further, the Commission adds language to Part 4. For example, now that small conduit exemptions are permitted to be located on federal lands, the Commission adds a provision requiring an exemptee with a small conduit exemption on federal lands to notify the respective federal land agency when it requests to surrender its exemption. The Commission also adds a new subpart to Part 4 (i.e., Subpart N) on qualifying conduit hydropower facilities to set forth the required contents of a notice of intent to construct, which will provide the Commission with information necessary to determine whether the proposed facility meets the requirements of the Hydropower Efficiency Act.

10. Along with conforming the Commission's regulations, this Final Rule corrects miscellaneous grammatical and typographical mistakes to improve the clarity and accuracy of the regulations. All revisions provided in the Final Rule are intended to be ministerial.

II. Information Collection Statement

11. The Paperwork Reduction Act [9] requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements imposed by agency rules.[10] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of an agency rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

12. The Commission will submit the revised information collection requirements to OMB for its review and approval. The entities affected by this rule would be those with: (1) Preliminary permits who request extensions, (2) proposed non-municipal small conduit hydroelectric facilities (with a total installed capacity of greater than 15 MW and up to 40 MW) requesting exemptions, (3) proposed small conduit hydroelectric facilities (located on federal lands) requesting exemptions, (4) proposed small hydroelectric power projects (with total installed capacity of greater than 5 MW and up to 10 MW) requesting exemptions, and (5) proposals to construct projects eligible to be qualifying conduit hydropower facilities. The Commission will submit the information collection requirements in this Final Rule to OMB for its review. The information collection requirements are included in the following FERC collection numbers: (a) FERC–505, ''Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination,'' [11] and (b) FERC–512, ''Preliminary Permit.''

13. *Information Collection Costs:* The Commission's estimated average annual reporting burden and cost associated with implementation of this rule follows. Overall, the rule reduces the current burden for affected entities. As noted earlier, permittees may request a two-year extension of their preliminary

[4] 16 U.S.C. 823a (2012), *amended by,* Hydropower Regulatory Efficiency Act of 2013, Public Law 113–23, 4, 127 Stat. 493 (2013).

[5] 16 U.S.C. 2708 (2012).

[6] 16 U.S.C. 823(a) (2012), *amended by,* Hydropower Regulatory Efficiency Act of 2013, Public Law 113–23, 4, 127 Stat. 493 (2013).

[7] 16 U.S.C. 2705, *amended by,* Hydropower Regulatory Efficiency Act of 2013, Public Law 113–23, 3, 127 Stat. 493 (2013).

[8] *See* Federal Energy Regulatory Commission, Hydropower Regulatory Efficiency Act of 2013, *http://www.ferc.gov/industries/hydropower/indus-act/efficiency-act.asp.*

[9] 44 U.S.C. 3501–3520 (2012).

[10] *See* 5 CFR 1320.10 (2014).

[11] The former title of FERC collection number FERC–505 was ''Application for License/Relicense for Hydropower Projects with 5 MW or Less Capacity.''

permit term without preparing a successive preliminary permit application or competing with other entities for the site. Moreover, more entities may qualify for exemption from certain licensing requirements (i.e., small conduit hydroelectric facilities or small hydroelectric power projects), and others may qualify to operate their projects without Commission oversight (i.e., qualifying conduit hydropower facilities).

ANNUAL CHANGES IMPLEMENTED BY THE FINAL RULE IN RM14–22 [12]

Type of respondents	Number of respondents	Annual number of responses [13] per respondent	Total number of responses	Average burden & cost per response	Total annual burden hours & total annual cost	Cost per respondent
	(a)	(b)	(a)×(b)=(c)	(d)	(c)×(d)=(e)	(e)/(a)
FERC–505, Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination						
Small conduit exemption applications (40 MW or less, which can now be on fed. lands) [14]	[15] 5	1	5	46 hrs. $3,243	230 hrs. $16,215	$3,243
Small conduit exemption holder—notice to fed. agencies of petition to surrender and steps to be taken to restore lands	1	[16] 0.1	0.1	46 hrs. $3,243	4.6 hrs. $324	324
Small hydroelectric power project exemption applications (greater than 5 MW and up to 10 MW) [17]	2	1	2	46 hrs. $3,243	92 hrs. $6,486	3,243
Qualifying conduit hydropower facility -notices of intent [18]	[19] 8	1	8	46 hrs. $3,243	368 hrs. $25,944	3,243
FERC–512, Application for Preliminary Permit						
Request for extension to 5 years	[20] 80	1	80	4 hrs. $282	320 hrs. $22,560	282

14. *Title:* FERC–505, ''Small Hydropower Projects and Conduits including License/Relicense, Exemption, and Qualifying Conduit Facility Determination,'' and FERC–512, ''Preliminary Permit.''

15. *Action:* Revisions to FERC–505 and FERC–512.

16. *OMB Control Nos.:* 1902–0115 (FERC–505) and 1902–0073 (FERC–512).

17. *Respondents:* Municipalities, businesses, private citizens, and for-profit and not-for-profit institutions.

18. *Necessity of Information:* The revised regulations implement the Hydropower Efficiency Act's amendments to preliminary permits, small conduit hydroelectric facilities, and small hydroelectric power projects, and the Act's addition of qualifying conduit hydropower facilities. The revised regulations for the most part affect only the number of entities that would file applications with the Commission in addition to imposing two new information collection requirements.

19. The new requirement for a respondent requesting to surrender a small conduit exemption on federal lands to notify the respective federal land agency is necessary for the Commission to carry out its responsibilities under the FPA, as amended by the Hydropower Efficiency Act. The information provided to the respective federal land agency will help inform the agency of activities occurring on federal lands or reservations under the agency's jurisdiction.

20. The new requirement to file a notice of intent to construct a qualifying conduit hydropower facility with the Commission is necessary to carry out

[12] The estimated average hourly cost (salary plus benefits) is $70.50.

[13] We consider the filing of an application to be a ''response.''

[14] The estimates provided for small conduit exemption applications are for all conduit exemption applications, including applications for non-municipal conduit exemptions that have an installed capacity of greater than 15 MW and up to 40 MW, and for any conduit exemption located on federal land.

[15] The Commission previously received roughly nine small conduit exemption applications annually, many of which are now likely to be eligible to be qualifying conduit hydropower facilities, and thus are not required to be licensed under Part I of the FPA. After implementation of this rule, we estimate five new small conduit exemption applications per year.

[16] Since August 2013, the Commission has received three small conduit exemption applications, one of which proposes to locate the project on federal lands. We anticipate surrenders of conduit exemptions on federal lands to be rare, and therefore, we estimate one surrender of a conduit exemption on federal lands to be filed every ten years (equaling on average 0.1 applications per year). The one surrender would trigger agency notification, which is estimated to take 46 hours. The burden and cost are being averaged over that ten-year period (equaling on average 4.6 hours per year).

[17] The Commission received six license applications between 2010 and 2013 that proposed projects with installed capacity greater than 5 MW, which could now qualify for a small hydroelectric power project exemption. Therefore, Commission staff estimates that on average the Commission receives two applications per year.

[18] A notice of intent is a request that the Commission determine a project is a qualifying conduit hydropower facility.

[19] While the Commission initially received a rash of notices of intent to construct qualifying conduit hydropower facilities, we expect notices of intent to taper off. Nearly 75 percent of the 23 notices of intent we received in the past year were filed within the first 6 months of the program. In the last three months, we have received two notices of intent. Therefore, we estimate that we will receive eight notices of intent per year.

[20] Based on the number of preliminary permits issued in the past 3 years, Commission staff estimates that an annual average of 80 permits will be eligible to request an extension.

the Commission's responsibilities under section 30(a) of the FPA, as amended by the Hydropower Efficiency Act. The information provided to the Commission enables the Commission to review the features of the proposed project and make a determination on whether a proposed project is a qualifying conduit hydropower facility. As noted earlier, the Commission already complies with the Hydropower Efficiency Act by requiring entities requesting qualifying conduit facility determinations to file with the Commission a notice of intent to construct, which follows the procedural guidance provided on the Commission's Web site.

21. *Internal Review:* The Commission has reviewed the revisions and has determined that they are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

22. *Comments:* The revised information collection requirements will not be effective or enforceable until OMB approves the information collection changes described in this order. The Commission, however, will continue to use its existing regulations and procedures available on its Web site to accept requests for two-year extensions of preliminary permits, applications for non-municipal small conduit exemptions with installed capacity greater than 15 MW and up to 40 MW, applications for small conduit exemptions located on federal lands, applications for small hydroelectric power project exemptions greater than 5 MW and up to 10 MW, and notices of intent to construct qualifying conduit hydropower facilities.

23. The Commission solicits comments on the Commission's need for this information; whether the information will have practical utility; the accuracy of provided burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques. Comments are due within 60 days of the date this order is published in the **Federal Register**. After receipt and analysis of public comments, the Commission will issue a second notice in this docket requesting public comment, and will submit the reporting requirements to OMB for approval.

24. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director], by phone (202) 502–8663, or by email to *DataClearance@ferc.gov.*

25. Comments concerning the information collections in this Final Rule and the associated burden estimates should be sent to the Commission and reference Docket No. RM14–22–000. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* Commenters that are not able to file comments electronically should send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

III. Environmental Analysis

26. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[21] Excluded from this requirement are rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or the regulations being amended.[22] This Final Rule amends the Commission's regulations to conform to recent legislation and corrects grammatical and clerical errors; and does not substantially change the effect of the underlying legislation or regulations being revised.

IV. Regulatory Flexibility Act

27. The Regulatory Flexibility Act of 1980 (RFA)[23] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.

28. However, final rules promulgated without the publication of a general notice of proposed rulemaking under section 553 of the Administrative Procedure Act (APA)[24] are exempt from the RFA's requirements.[25] Section 553(b)(3)(A) of the APA states that final rules that are interpretive rules may be published without general notice of proposed rulemaking. Interpretive rules are defined as rules that ''generally interpret the intent expressed by Congress'' where an agency ''does not insert its own judgments in implementing a rule, and simply regurgitates statutory language.''[26] They are an ''agency's reading of a statute'' that do not ''intend to create new rights or duties, but only remind[] affected parties of existing duties.''[27]

29. This Final Rule is an interpretive rule because it modifies the Commission's regulations to conform to the Hydropower Efficiency Act. It does not create new rights or duties. Rather, it reminds affected parties of existing duties required by the Hydropower Efficiency Act, with which the Commission and non-agency entities have complied since the Act's enactment.

V. Document Availability

30. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern Time) at 888 First Street NE., Room 2A, Washington, DC 20426.

31. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

32. User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or by email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

VI. Effective Date and Congressional Notification

33. These regulations are effective February 23, 2015. The Commission has determined, with the concurrence of the

[21] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[22] 18 CFR 380.4(a)(2)(ii) (2014).

[23] 5 U.S.C. 601–612 (2012).

[24] 5 U.S.C. 553 (2012).

[25] 5 U.S.C. 604(a) (2012).

[26] Small Business Administration, Office of Advocacy, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* 9 (May 2012), *available at http://www.sba.gov/sites/default/files/rfaguide_0512_0.pdf.*

[27] *Orengo Caraballo v. Reich,* 11 F.3d 186, 195 (D.C. Cir. 1993).

Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.[28] This rule is being submitted to the Senate, House, and Government Accountability Office.

List of Subjects

18 CFR Part 4

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 380

Environmental impact statements, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission is amending Parts 4 and 380, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

■ 1. The authority citation for Part 4 continues to read as follows:

Authority: 16 U.S.C. 791a–825v, 2601–2645; 42 U.S.C. 7101–7352.

■ 2. Amend § 4.30 as follows:
■ a. Revise paragraph (b)(4)(ii);
■ b. Revise paragraph (b)(8);
■ c. Revise paragraph (b)(20);
■ d. Redesignate paragraphs (b)(25) through (b)(30) as (b)(27) through (b)(32); and redesignate paragraphs (b)(21) through (b)(24) as (b)(22) through (b)(25);
■ e. Add paragraph (b)(21);
■ f. Revise redesignated paragraph (b)(24);
■ g. Add paragraph (b)(26);
■ h. Revise redesignated paragraph (b)(30);
■ i. Revise the introductory text of redesignated paragraph (b)(31).

The revisions and additions read as follows:

§ 4.30 Applicability and definitions.

* * * * *

(b) * * *

(4) * * *

(ii) *Dam,* for the purposes of provisions governing an application for exemption of a small conduit hydroelectric facility or a notice of intent to construct a qualifying conduit hydropower facility, means any structure that impounds water.

* * * * *

(8) *Federal lands,* for the purposes of provisions governing an application for exemption of a small conduit hydroelectric facility or a small hydroelectric power project, means any lands to which the United States holds fee title.

* * * * *

(20) *Non-Federal lands,* for the purposes of provisions governing application for exemption of a small conduit hydroelectric facility or a small hydroelectric power project, means any lands except lands to which the United States holds fee title.

(21) *Non-federally owned conduit,* for the purposes of provisions governing the notice of intent to construct qualifying conduit hydropower facilities, means any conduit except a conduit to which the United States holds fee title.

* * * * *

(24) *Qualified exemption applicant,* means any person who meets the requirements specified in § 4.31(c)(2) with respect to a small hydroelectric power project for which exemption from licensing is sought.

* * * * *

(26) *Qualifying conduit hydropower facility,* means a facility, not including any dam or impoundment, that is not required to be licensed under Part I of the FPA because it is determined to meet the following criteria:

(i) Generates electric power using only the hydroelectric potential of a non-federally owned conduit;

(ii) Has an installed capacity that does not exceed 5 megawatts (MW); and,

(iii) Was not licensed or exempted from the licensing requirements of Part I of the FPA on or before August 9, 2013.

* * * * *

(30) *Small conduit hydroelectric facility,* means an existing or proposed hydroelectric facility that is constructed, operated, or maintained for the generation of electric power, and includes all structures, fixtures, equipment, and lands used and useful in the operation or maintenance of the hydroelectric facility, but excludes the conduit on which the hydroelectric facility is located and the transmission lines associated with the hydroelectric facility and which:

(i) Utilizes for electric power generation the hydroelectric potential of a conduit;

(ii) Has an installed generating capacity that does not exceed 40 MW;

(iii) Is not an integral part of a dam;

(iv) Discharges the water it uses for power generation either:

(A) Into a conduit;

(B) Directly to a point of agricultural, municipal, or industrial consumption; or

(C) Into a natural water body if a quantity of water equal to or greater than the quantity discharged from the hydroelectric facility is withdrawn from that water body downstream into a conduit that is part of the same water supply system as the conduit on which the hydroelectric facility is located; and

(v) Does not rely upon construction of a dam, which construction will create any portion of the hydrostatic head that the facility uses for power generation unless that construction would occur for agricultural, municipal, or industrial consumptive purposes even if hydroelectric generating facilities were not installed.

(31) *Small hydroelectric power project,* means any project in which capacity will be installed or increased after the date of application under subpart K of this chapter, which will have a total installed capacity of not more than 10 MW, and which:

* * * * *

§ 4.31 [Amended]

■ 3. Revise paragraphs (b) and (c)(2) of § 4.31 to read as follows:

§ 4.31 Initial or competing application: who may file.

* * * * *

(b) *Application for exemption of a small conduit hydroelectric facility*—(1) *Exemption from provisions other than licensing*—(i) *Only federal lands involved.* If only rights to use or occupy federal lands would be necessary to develop and operate the proposed small conduit hydroelectric facility, any citizen, association of citizens, domestic corporation, municipality, or state may apply for exemption of a small conduit hydroelectric facility from provisions of Part I of the Federal Power Act, other than licensing provisions.

(ii) *Some non-federal lands involved.* If real property interests in any non-federal lands would be necessary to develop and operate the proposed small conduit hydroelectric facility, any citizen, association of citizens, domestic corporation, municipality, or state that has all of the real property interests in the lands necessary to develop and operate that project, or an option to obtain those interests, may apply for exemption of a small conduit hydroelectric facility from provisions of Part I of the Federal Power Act, other than licensing provisions.

[28] 5 U.S.C. 804(2) (2012).

(2) *Exemption from licensing*—(i) *Only federal lands involved.* If only rights to use or occupy federal lands would be necessary to develop and operate the proposed small conduit hydroelectric facility, any citizen, association of citizens, domestic corporation, municipality, or state may apply for exemption of that facility from licensing under Part I of the Federal Power Act.

(ii) *Some non-federal lands involved.* If real property interests in any non-federal lands would be necessary to develop and operate the proposed small conduit hydroelectric facility, any citizen, association of citizens, domestic corporation, municipality, or state who has all the real property interests in the lands necessary to develop and operate the small conduit hydroelectric facility, or an option to obtain those interests, may apply for exemption of that facility from licensing under Part I of the Federal Power Act.

(c) * * *

(2) *Exemption from licensing*— (i) *Only Federal lands involved.* If only rights to use or occupy Federal lands would be necessary to develop and operate the proposed small hydroelectric power project, any citizen, association of citizens, domestic corporation, municipality, or state may apply for exemption of that project from licensing.

(ii) *Some non-Federal lands involved.* If real property interests in any non-Federal lands would be necessary to develop and operate the proposed small hydroelectric power project, any citizen, association of citizens, domestic corporation, municipality, or state who has all of the real property interests in non-Federal lands necessary to develop and operate that project, or an option to obtain those interests, may apply for exemption of that project from licensing.

§ 4.34 [Amended]

■ 4. Revise paragraph (f)(2) of § 4.34 to read as follows:

§ 4.34 Hearings on applications; consultation on terms and conditions; motions to intervene; alternative procedures.

* * * * *

(f) * * *

(2) *Exemption conditions.* Any exemption from licensing issued for conduit facilities, as provided in section 30(b) of the Federal Power Act, or for small hydroelectric power projects having a proposed installed capacity of 10,000 kilowatts or less, as provided in section 405(d) of the Public Utility Regulatory Policies Act of 1978, as amended, shall include such terms and conditions as the fish and wildlife agencies may timely determine are appropriate to carry out the responsibilities specified in section 30(c) of the Federal Power Act.

* * * * *

§ 4.38 [Amended]

■ 5. In § 4.38(a)(1), remove the words ''United States lands'' and add, in their place, the words ''federal lands''.

§ 4.39 [Amended]

■ 6. In § 4.39(d), remove the reference ''§ 4.31(c)'' and add, in its place, the reference ''§ 4.32(d)''.

§ 4.82 [Amended]

■ 7. In § 4.82:

■ a. In paragraph (a), remove the word ''three'' and add, in its place, the word ''five''.

■ b. In paragraph (a), remove the reference ''§ 4.81(b), (c), (d), and (e)'' and add, in its place, the reference ''§ 4.81(b), (c), and (d)''.

■ c. In paragraph (c), remove the word ''three'' and add, in its place, the word ''five''.

§ 4.90 [Amended]

■ 8. Revise § 4.90 to read as follows:

§ 4.90 Applicability and purpose.

This subpart implements section 30(b) of the Federal Power Act and provides procedures for obtaining an exemption for constructed or unconstructed small conduit hydroelectric facilities, as defined in § 4.30(b)(30), from all or part of the requirements of Part I of the Federal Power Act, including licensing, and the regulations issued under Part I.

§ 4.92 [Amended]

■ 9. Amend § 4.92 as follows:

■ a. Revise paragraphs (a)(1) and (3);

■ b. In paragraph (b), remove the two references to ''§ 4.30(b)(28)'' and add, in their place, the reference ''§ 4.30(b)(30)'';

■ c. In paragraph (b), remove the three references to ''§ 4.30(b)(28)(v)'' and add, in their place, the reference ''§ 4.30(b)(30)(iv)'';

■ d. In paragraph (b), in the phrase ''The exact name and business address of each applicant is:'' correct the word ''is'' to read ''are'';

■ e. In paragraph (b), in the phrase ''The exact name and business address of each person authorized to act as agent for the applicant in this application is:'' correct the word ''is'' to read ''are'';

■ f. In paragraph (b), remove the phrase ''as appropriate), as appropriate]'' and add in its place ''as appropriate)]'';

■ g. Revise paragraphs (c)(9) and (11).

The revisions read as follows:

§ 4.92 Contents of exemption application.

(a) * * *

(1) An introductory statement, including a declaration that the facility for which application is made meets the requirements of § 4.30(b)(30), or if the facility qualifies but for the discharge requirement of § 4.30(b)(30)(iv), the introductory statement must identify that fact and state that the application is accompanied by a petition for waiver of § 4.30(b)(30)(iv) filed pursuant to § 385.207 of this chapter;

* * * * *

(3) If the project structures would use or occupy any lands other than federal lands, an appendix containing documentary evidence showing that the applicant has the real property interests required under § 4.31(b); and

* * * * *

(c) * * *

(9) If the hydroelectric facility discharges directly into a natural body of water and a petition for waiver of § 4.30(b)(30)(iv) has not been submitted, evidence that a quantity of water equal to or greater than the quantity discharged from the hydroelectric facility is withdrawn from that water body downstream into a conduit that is part of the same water supply system as the conduit on which the hydroelectric facility is located.

* * * * *

(11) A description of the nature and extent of any construction of a dam that would occur in association with construction of the proposed small conduit hydroelectric facility, including a statement of the normal maximum surface area and normal maximum surface elevation of any existing impoundment before and after that construction; and any evidence that the construction of the dam would occur for agricultural, municipal, or industrial consumptive purposes even if hydroelectric generating facilities were not installed.

* * * * *

§ 4.93 [Amended]

■ 10. In § 4.93(a), remove the reference ''§ 4.30(b)(28)(v)'' and add, in its place, the reference ''§ 4.30(b)(30)(iv).''

§ 4.94 [Amended]

■ 11. Amend § 4.94 as follows:

■ a. Redesignate paragraphs (d) through (f) as (e) through (g);

■ b. In redesignated paragraphs (e) through (g), revise the italic paragraph headings; and

■ c. Add paragraph (d) to read as follows:

§ 4.94 Standard terms and conditions of exemption.

* * * * *

(d) *Article 4.* This exemption does not confer any right to use or occupy any federal lands that may be necessary for the development or operation of the project. Any right to use or occupy any federal lands for those purposes must be obtained from the administering federal land agencies. The Commission may accept a license application submitted by any qualified license applicant and revoke this exemption, if any necessary right to use or occupy federal lands for those purposes has not been obtained within one year from the date on which this exemption was granted.

(e) *Article 5.* * * *

(f) *Article 6.* * * *

(g) *Article 7.* * * *

§ 4.95 [Amended]

■ 12. In § 4.95, add paragraph (e) to read as follows:

§ 4.95 Surrender of exemption.

* * * * *

(e) Where occupancy of federal lands or reservations has been permitted by a federal agency having supervision over such lands, the exemption holder must concurrently notify that agency of the petition to surrender and of the steps that will be taken to restore the affected federal lands or reservations.

Subpart K—Exemption of Small Hydroelectric Power Projects of 10 Megawatts or Less

■ 13. Revise the heading of Subpart K, to read as set forth above.

§ 4.101 [Amended]

■ 14. In § 4.101, remove the reference ''§ 4.30(b)(29)'' and add, in its place, the reference ''§ 4.30(b)(31)''.

§ 4.102 [Amended]

■ 15. In § 4.102(e), remove the words ''United States lands'' and add, in their place, the words, ''federal lands''.

§ 4.106 [Amended]

■ 16. In § 4.106(h), remove the end punctuation '':'' and add, in its place, a period.

§ 4.107 [Amended]

■ 17. In § 4.107(b)(1), remove the number ''5'' and add, in its place, the number ''10''.

■ 18. Add new Subpart N to read as follows:

Subpart N—Notice of Intent To Construct Qualifying Conduit Hydropower Facilities

Sec.
4.400 Applicability and purpose.
4.401 Contents of notice of intent to construct a qualifying conduit hydropower facility.

Subpart N—Notice of Intent To Construct Qualifying Conduit Hydropower Facilities

§ 4.400 Applicability and purpose.

This part implements section 30(a) of the Federal Power Act, as amended by the Hydropower Regulatory Efficiency Act of 2013, and provides procedures for obtaining a determination from the Commission that the facility to be constructed is a qualifying conduit hydropower facility, as defined in § 4.30(b)(26), and thus, is not required to be licensed under Part I of the FPA.

§ 4.401 Contents of notice of intent to construct a qualifying conduit hydropower facility.

(a) A notice of intent to construct a qualifying conduit hydropower facility submitted under this subpart must contain the following:

(1) An introductory statement as described in paragraph (b) of this section;

(2) A statement that the proposed project will use the hydroelectric potential of a non-federally owned conduit as set forth in paragraph (c) of this section;

(3) A statement that the proposed facility has not been licensed or exempted from the licensing requirements of Part I of the FPA, on or before August 9, 2013, the date of enactment of the Hydropower Regulatory Efficiency Act, as set forth in in paragraph (d) of this section;

(4) A description of the proposed facility as set forth in paragraph (e) of this section;

(5) Project drawings as set forth in paragraph (f) of this section;

(6) If applicable, the preliminary permit project number for the proposed facility; and,

(7) Verification as set forth in paragraph (g) of this section.

(b) *Introductory statement.* The introductory statement must be set forth in the following format:

BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

NOTICE OF INTENT TO CONSTRUCT QUALIFYING CONDUIT HYDROPOWER FACILITY

[Name of applicant] applies to the Federal Energy Regulatory Commission for a determination that the [facility name] is a qualifying conduit hydropower facility, meeting the requirements of section 30(a) of the Federal Power Act, as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013.

The location of the facility is:

State or Territory: _____

County: _____

Township or nearby town: _____

Water source: _____

The exact name and business address of the applicant(s) are:

Applicant's Name: _____

Address: _____

Telephone Number: _____

Email Address: _____

The exact name and business address of each person authorized to act as an agent for the applicant(s) in this notice of intent are:

Name of Agent: _____

Address: _____

Telephone Number: _____

Email Address: _____

[Name of applicant] is [a citizen of the United States, an association of citizens of the United States, a municipality, State, or a corporation incorporated under the laws of (specify the United States or the state of incorporation), as appropriate].

(c) *Non-Federal Conduit Statement.* The non-federal conduit statement must be set forth in the following format:

The [facility name] will use the hydroelectric potential of a non-federally owned conduit.

(d) *Original facility statement.* The original facility statement must be set forth in the following format:

The [facility name] has not been licensed or exempted from the licensing requirements of Part I of the FPA, on or before August 9, 2013, the date of enactment of the Hydropower Regulatory Efficiency Act.

(e) *Description of proposed facility.* Description of proposed facility must include:

(1) A detailed description of any conduits and associated consumptive water supply facilities, intake facilities, powerhouses, and any other structures associated with the facility;

(2) The purposes for which the conduit is used;

(3) The number, type, generating capacity (kW or MW), and estimated average annual generation (kWh or MWh) of the generating units and brief description of any plans for future units; and,

(4) A description of the nature and extent of the dam that would occur in association with construction of the proposed qualifying conduit hydroelectric facility, including a statement of the normal maximum surface area and normal maximum

surface elevation of any existing impoundment before and after that construction; and any evidence that the construction of the dam would occur for agricultural, municipal, or industrial consumptive purposes even if the hydropower generating facilities were not installed.

(f) *Drawings, maps, diagrams.* Include a set of drawings/maps/diagrams showing the structures and equipment of the hydropower facility in relation to the existing conduit. Drawings of the facility must include:

(1) A Plan View (overhead view) drawing of the proposed hydropower facilities, which includes the following:

(i) The hydropower facilities, including all intake and discharge pipes, and how those pipes connect to the conduit;

(ii) The portion of the conduit in proximity to the facilities on which the hydropower facilities will be located;

(iii) The dimensions (e.g., length, width, diameter) of all facilities, intakes, discharges, and conduits;

(iv) Identification of facilities as either existing or proposed;

(v) The flow direction labelled on all intakes, discharges, and conduits; and,

(2) A Location Map showing the facilities and their relationship to the nearest town, which includes the following:

(i) The powerhouse location labeled, and its latitude and longitude identified; and,

(ii) The nearest town, if possible, or other permanent monuments or objects, such as roads or other structures that can be easily noted on the map and identified in the field.

(3) If a dam would be constructed in association with the facility, a profile drawing showing the conduit, and not the dam, creates the hydroelectric potential.

(g) *Verification.* Provide verification using either a sworn, notarized statement set forth in paragraph (g)(1) of this section or an unsworn statement set forth in paragraph (g)(2) of this section.

(1) As to any facts alleged in the notice of intent to construct or other materials filed, be subscribed and verified under oath in the form set forth below by the person filing, an officer thereof, or other person having knowledge of the matters set forth. If the subscription and verification is by anyone other than the person filing or an officer thereof, it shall include a statement of the reasons therefor.

This (notice of intent to construct, etc.) is executed in the:

State of: _____

County of: _____

by:

(Name) _____

(Address) _____

being duly sworn, depose(s) and say(s) that the contents of this (notice of intent to construct, etc.) are true to the best of (his or her) knowledge or belief. The undersigned applicant(s) has (have) signed the (notice of intent to construct, etc.) this _____day of _____, 20____.

By: _____

Subscribed and sworn to before me, a _____ [Notary Public, or title of other official authorized by the state to notarize documents, as appropriate] of the State of _____this day of _____, 20____.

/SEAL/[if any]

_____

(Notary Public, or other authorized official)

(2) I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on _____[date].

_____

(Signature)

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

■ 19. The authority citation for Part 380 continues to read as follows:

Authority: 42 U.S.C. 4321–4370h, 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

§ 380.4 [Amended]

■ 20. In § 380.4(a)(14), remove the reference ''§ 4.30(b)(26)'' and add, in its place, the reference ''§ 4.30(b)(30)''.

§ 380.5 [Amended]

■ 21. In § 380.5(b)(7):

■ a. Remove the reference ''§ 4.30(b)(29)'' and add, in its place, the reference ''§ 4.30(b)(31)''.

■ b. Remove the number ''5'' and add, in its place, the number ''10''.

[FR Doc. 2014–23204 Filed 9–30–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9696]

RIN 1545–BH60

Local Lodging Expenses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the deductibility of expenses for lodging when an individual is not traveling away from home (local lodging). The regulations affect taxpayers who pay or incur local lodging expenses.

DATES: *Effective Date:* These regulations are effective on October 1, 2014.

Applicability Dates: For dates of applicability, see §§ 1.162–32(d) and 1.262–1(b)(5).

FOR FURTHER INFORMATION CONTACT: Peter Ford, (202) 317–7011 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations that amend the Income Tax Regulations (26 CFR part 1) under sections 162 and 262 of the Internal Revenue Code (Code) relating to the deduction of local lodging expenses. On April 25, 2012, a notice of proposed rulemaking (REG–137589–07) was published in the **Federal Register** (77 FR 24657). One written comment responding to the notice of proposed rulemaking was received. No public hearing was requested or held. After consideration of the comment, the regulations are adopted as amended by this Treasury decision.

Summary of Comment and Explanation of Provisions

The provisions of the proposed regulations under section 162 of the Code were designated as § 1.162–31, however, after the proposed regulations were published, unrelated regulations were finalized as § 1.162–31. Accordingly, the final regulations in this document under section 162 are designated as § 1.162–32.

Under the general rule in § 1.162–31(a) of the proposed regulations, local lodging expenses for an individual are personal, living, or family expenses that are nondeductible by the individual under section 262(a). Depending on the facts and circumstances, however, local lodging expenses may be deductible under section 162 as ordinary and necessary business expenses. Section 1.162–31(b) of the proposed regulations provides a safe harbor, pursuant to which local lodging expenses that meet certain criteria are treated as ordinary and necessary business expenses of an individual. Local lodging expenses that meet either the facts and circumstances test of paragraph (a) or the safe harbor requirements of paragraph (b) are deductible by an individual if incurred directly. Alternatively, if the expenses

are incurred by an employer on behalf of an employee, the value of the local lodging may be excludible from the income of the employee as a working condition fringe under section 132(a) and (d). To the extent an employer reimburses an employee for local lodging expenses, the reimbursement may be excludible from the employee's gross income if the expense allowance arrangement satisfies the requirements of an accountable plan under section 62(c) and the applicable regulations. The expenses are also deductible by the employer as ordinary and necessary business expenses.

The commenter requested that the final regulations be revised to make it clear that a taxpayer's local lodging expenses that do not satisfy the safe harbor under § 1.162–31(b) of the proposed regulations may nonetheless be deductible under § 1.162–31(a) of the proposed regulations depending on the taxpayer's facts and circumstances. In response to this comment, the final regulations clarify that the examples illustrate the facts and circumstances test. Specifically, the examples illustrate situations in which certain conditions of the safe harbor are not satisfied and, therefore, the facts and circumstances test determines the appropriate treatment.

An example in the proposed regulations describes circumstances in which a professional sports team provides local lodging to players and coaches for a noncompensatory business purpose. The commenter suggested that the final regulations clarify that local lodging provided to other employees of a sports team also may be ordinary and necessary noncompensatory business expenses. In response to this comment, the final regulations revise the example to clarify that the reference to players and coaches is illustrative and not exclusive.

The commenter requested that the final regulations clarify the circumstances in which meal expenses paid or incurred in connection with lodging expenses are deductible. The final regulations do not adopt this comment, as the proposed regulations did not provide rules relating to meal expenses and those issues are beyond the scope of these regulations.

Effective/Applicability Date

These regulations apply to expenses paid or incurred on or after October 1, 2014. Taxpayers may apply these regulations to expenses paid or incurred in taxable years ending before October 1, 2014, for which the period of limitation on credit or refund under section 6511 has not expired.

Special Analyses

This Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received.

Drafting Information

The principal author of these regulations is R. Matthew Kelley of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.162–32 is added to read as follows:

§ 1.162–32 Expenses paid or incurred for lodging when not traveling away from home.

(a) *In general.* Expenses paid or incurred for lodging of an individual who is not traveling away from home (local lodging) generally are personal, living, or family expenses that are nondeductible by the individual under section 262(a). Under certain circumstances, however, local lodging expenses may be deductible under section 162(a) as ordinary and necessary expenses paid or incurred in connection with carrying on a taxpayer's trade or business, including a trade or business as an employee. Whether local lodging expenses are paid or incurred in carrying on a taxpayer's trade or business is determined under all the facts and circumstances. One factor is whether the taxpayer incurs an expense because of a bona fide condition or requirement of employment imposed by the taxpayer's employer. Expenses paid or incurred for local lodging that is lavish or extravagant under the circumstances or that primarily provides an individual with a social or personal benefit are not incurred in carrying on a taxpayer's trade or business.

(b) *Safe harbor for local lodging at business meetings and conferences.* An individual's local lodging expenses will be treated as ordinary and necessary business expenses if—

(1) The lodging is necessary for the individual to participate fully in or be available for a bona fide business meeting, conference, training activity, or other business function;

(2) The lodging is for a period that does not exceed five calendar days and does not recur more frequently than once per calendar quarter;

(3) If the individual is an employee, the employee's employer requires the employee to remain at the activity or function overnight; and

(4) The lodging is not lavish or extravagant under the circumstances and does not provide any significant element of personal pleasure, recreation, or benefit.

(c) *Examples.* The provisions of the facts and circumstances test of paragraph (a) of this section are illustrated by the following examples. In each example the employer and the employees meet all other requirements (such as substantiation) for deductibility of the expense and for exclusion from income of the value of the lodging as a working condition fringe or of reimbursements under an accountable plan.

Example 1. (i) Employer conducts a seven-day training session for its employees at a hotel near Employer's main office. The training is directly connected with Employer's trade or business. Some employees attending the training are traveling away from home and some employees are not traveling away from home. Employer requires all employees attending the training to remain at the hotel overnight for the bona fide purpose of facilitating the training. Employer pays the costs of the lodging at the hotel directly to the hotel and does not treat the value as compensation to the employees.

(ii) Because the training is longer than five calendar days, the safe harbor in paragraph (b) of this section does not apply. However, the value of the lodging may be excluded from income if the facts and circumstances test in paragraph (a) of this section is satisfied.

(iii) The training is a bona fide condition or requirement of employment and Employer has a noncompensatory business purpose for paying the lodging expenses. Employer is not paying the expenses primarily to provide a social or personal benefit to the employees, and the lodging Employer provides is not lavish or extravagant. If the employees who are not traveling away from home had paid for their own lodging, the expenses would have been deductible by the employees under section 162(a) as ordinary and necessary business expenses. Therefore, the value of the lodging is excluded from the employees' income as a working condition fringe under section 132(a) and (d).

(iv) Employer may deduct the lodging expenses, including lodging for employees who are not traveling away from home, as ordinary and necessary business expenses under section a162(a).

Example 2. (i) The facts are the same as in *Example 1,* except that the employees pay the cost of their lodging at the hotel directly to the hotel, Employer reimburses the employees for the cost of the lodging, and Employer does not treat the reimbursement as compensation to the employees.

(ii) Because the training is longer than five calendar days, the safe harbor in paragraph (b) of this section does not apply. However, the reimbursement of the expenses for the lodging may be excluded from income if the facts and circumstances test in paragraph (a) of this section is satisfied.

(iii) The training is a bona fide condition or requirement of employment and Employer is reimbursing the lodging expenses for a noncompensatory business purpose and not primarily to provide a social or personal benefit to the employees and the lodging Employer provides is not lavish or extravagant. The employees incur the expenses in performing services for the employer. If Employer had not reimbursed the employees who are not traveling away from home for the cost of the lodging, the expenses would have been deductible by the employees under section 162(a) as ordinary and necessary business expenses. Therefore, the reimbursements to the employees are made under an accountable plan and are excluded from the employees' gross income.

(iv) Employer may deduct the lodging expense reimbursements, including reimbursements for employees who are not traveling away from home, as ordinary and necessary business expenses under section 162(a).

Example 3. (i) Employer is a professional sports team. Employer requires its employees (for example, players and coaches) to stay at a local hotel the night before a home game to conduct last minute training and ensure the physical preparedness of the players. Employer pays the lodging expenses directly to the hotel and does not treat the value as compensation to the employees.

(ii) Because the overnight stays occur more than once per calendar quarter, the safe harbor in paragraph (b) of this section does not apply. However, the value of the lodging may be excluded from income if the facts and circumstances test in paragraph (a) of this section is satisfied.

(iii) The overnight stays are a bona fide condition or requirement of employment and Employer has a noncompensatory business purpose for paying the lodging expenses. Employer is not paying the lodging expenses primarily to provide a social or personal benefit to the employees and the lodging Employer provides is not lavish or extravagant. If the employees had paid for their own lodging, the expenses would have been deductible by the employees under section 162(a) as ordinary and necessary business expenses. Therefore, the value of the lodging is excluded from the employees' income as a working condition fringe.

(iv) Employer may deduct the expenses for lodging the employees at the hotel as ordinary and necessary business expenses under section 162(a).

Example 4. (i) Employer hires Employee, who currently resides 500 miles from Employer's business premises. Employer pays for temporary lodging for Employee near Employer's business premises while Employee searches for a residence.

(ii) Employer is paying the temporary lodging expense primarily to provide a personal benefit to Employee by providing housing while Employee searches for a residence. Employer incurs the expense only as additional compensation and not for a noncompensatory business purpose. If Employee paid the temporary lodging expense, the expense would not be an ordinary and necessary employee business expense under section 162(a) because the lodging primarily provides a personal benefit to Employee. Therefore, the value of the lodging is includible in Employee's gross income as additional compensation.

(iii) Employer may deduct the lodging expenses as ordinary and necessary business expenses under section 162(a) and § 1.162–25T.

Example 5. (i) Employee normally travels two hours each way between her home and her office. Employee is working on a project that requires Employee to work late hours. Employer provides Employee with lodging at a hotel near the office.

(ii) Employer is paying the temporary lodging expense primarily to provide a personal benefit to Employee by relieving her of the daily commute to her residence. Employer incurs the expense only as additional compensation and not for a noncompensatory business purpose. If Employee paid the temporary lodging expense, the expense would not be an ordinary and necessary business expense under section 162(a) because the lodging primarily provides a personal benefit to Employee. Therefore, the value of the lodging is includible in Employee's gross income as additional compensation.

(iii) Employer may deduct the lodging expenses as ordinary and necessary business expenses under section 162(a) and § 1.162–25T.

Example 6. (i) Employer requires an employee to be ''on duty'' each night to respond quickly to emergencies that may occur outside of normal working hours. Employees who work daytime hours each serve a ''duty shift'' once each month in addition to their normal work schedule. Emergencies that require the duty shift employee to respond occur regularly. Employer has no sleeping facilities on its business premises and pays for a hotel room nearby where the duty shift employee stays until called to respond to an emergency.

(ii) Because an employee's expenses for lodging while on the duty shift occur more frequently than once per calendar quarter, the safe harbor in paragraph (b) of this section does not apply. However, the value of the lodging may be excluded from income if the facts and circumstances test in paragraph (a) of this section is satisfied.

(iii) The duty shift is a bona fide condition or requirement of employment and Employer has a noncompensatory business purpose for paying the lodging expenses. Employer is not providing the lodging to duty shift employees primarily to provide a social or personal benefit to the employees and the lodging Employer provides is not lavish or extravagant. If the employees had paid for their lodging, the expenses would have been deductible by the employees under section 162(a) as ordinary and necessary business expenses. Therefore, the value of the lodging is excluded from the employees' income as a working condition fringe.

(iv) Employer may deduct the lodging expenses as ordinary and necessary business expenses under section 162(a).

(d) *Effective/applicability date.* This section applies to expenses paid or incurred on or after October 1, 2014. However, taxpayers may apply these regulations to local lodging expenses that are paid or incurred in taxable years for which the period of limitation on credit or refund under section 6511 has not expired.

■ **Par. 3.** In § 1.262–1, paragraph (b)(5) is revised to read as follows:

§ 1.262–1 Personal, living, and family expenses.

* * * * *

(b) * * *

(5) Expenses incurred in traveling away from home (which include transportation expenses, meals, and lodging) and any other transportation expenses are not deductible unless they qualify as expenses deductible under section 162 (relating to trade or business expenses), section 170 (relating to charitable contributions), section 212 (relating to expenses for production of income), section 213 (relating to medical expenses), or section 217 (relating to moving expenses), and the regulations under those sections. The taxpayer's costs of commuting to his place of business or employment are personal expenses and do not qualify as deductible expenses. For expenses paid or incurred before October 1, 2014, a taxpayer's expenses for lodging when not traveling away from home (local lodging) are nondeductible personal expenses. However, taxpayers may deduct local lodging expenses that qualify under section 162 and are paid

or incurred in taxable years for which the period of limitation on credit or refund under section 6511 has not expired. For expenses paid or incurred on or after October 1, 2014, a taxpayer's local lodging expenses are personal expenses and are not deductible unless they qualify as deductible expenses under section 162. Except as permitted under section 162 or 212, the costs of a taxpayer's meals not incurred in traveling away from home are nondeductible personal expenses.

* * * * *

Heather C. Maloy,

Acting Deputy Commissioner for Services and Enforcement.

Approved: August 22, 2013.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2014–23306 Filed 9–30–14; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0576; FRL–9916–28]

Fluoxastrobin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of fluoxastrobin and its Z-isomer in or on melon subgroup 9A; sorghum, grain, grain; sorghum, grain, forage; and sorghum, grain, stover. Arysta LifeScience, North America, LLC, requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 1, 2014. Objections and requests for hearings must be received on or before December 1, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0576, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Lois Rossi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0576 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 1, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0576, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 22, 2012 (77 FR 50661) (FRL–9358–9), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2F8047) by Arysta LifeScience, North America, LLC, 15401 Weston Pkwy, Suite 150, Cary, NC 27513. The petition requested that 40 CFR 180.609 be amended by establishing tolerances for combined residues of the fungicide, fluoxastrobin, (1*E*)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone *O*-methyloxime, and its *Z*-isomer, (1*Z*)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone *O*-methyloxime, in or on melon, subgroup 9A, at 1.5 parts per million (ppm); sorghum grain at 1.5 ppm; sorghum forage at 4 ppm; and sorghum stover at 4 ppm. That document referenced a summary of the petition prepared by Arysta LifeScience, North America LLC, the registrant, which is available in the docket, *http://www.regulations.gov.*

Comments were not received on the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Following repeated exposure, fluoxastrobin has mild or low toxicity in all tested species except for the dog. Repeated oral administration to dogs resulted in adverse liver toxicity at considerably lower doses than those noted in other species. Based on species sensitivity, the effects observed in the dog were used as endpoints for risk assessment. In both the 90-day and 1-year oral feeding studies in dogs, the liver appeared to be the target organ. In dogs, mice, and rats, the kidney was another target organ. There was no indication of an adverse effect attributable to a single dose. Based on developmental toxicity studies (rat and rabbit) and a 2-generation reproduction study (rat), there was neither increased susceptibility of pre-/postnatal exposure to fluoxastrobin, nor adverse effects on reproduction. Furthermore, neurotoxic effects were not seen in an acute neurotoxicity study in rats up to the limit dose of 2,000 mg/kg/day. In a subchronic neurotoxicity study in rats, fluoxastrobin did not elicit any neurotoxic effects. Repeated dose studies of fluoxastrobin in the database did not show immunotoxic effects in rats. Results of genotoxicity testing were negative and there were no treatment-related carcinogenicity findings in adequately performed carcinogenicity studies in rats and mice. Therefore, fluoxastrobin is classified as ''not likely to be carcinogenic to humans.'' Specific information on the studies received and the nature of the adverse effects caused by fluoxastrobin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document *Fluoxastrobin. Aggregate Human Health Risk Assessment for the Proposed New Uses on Melon Subgroup 9A and Sorghum, Along with Establishment of Permanent Tolerances on Wheat, and Amendments to Established Tolerances on Milk and Milk Fat* on page 26 in docket ID number EPA–HQ–OPP–2012–0576.

B. Toxicological Points of Departure/Levels of Concern

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

A summary of the toxicological endpoints for fluoxastrobin used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of April 11, 2014 (79 FR 20100, 20101–02) (FRL–9907–46), docket number EPA–HQ–OPP–2012–0576.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluoxastrobin, EPA considered exposure under the petitioned-for tolerances as well as all existing fluoxastrobin tolerances in 40 CFR 180.609. EPA assessed dietary exposures from fluoxastrobin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for fluoxastrobin; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* A slightly refined chronic dietary exposure assessment was performed for fluoxastrobin using tolerance-level residues, average field trial residues, and 100% crop treated (CT). This risk assessment was conducted using the DEEM–FCID Version 3.16. This model uses 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA).

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

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

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fluoxastrobin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluoxastrobin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.* In addition to evaluating the EDWCs from the proposed uses, EDWCs were reevaluated for all existing uses with Pesticide Root Zone Model Ground Water (PRZM–GW), which models continued use of fluoxastrobin over many years. For the chronic dietary assessment, the ground water EDWC (137 μg/L) was more conservative than the surface water EDWC (18.6 μg/L); the ground water EDWC was based on an existing turf use modeled with a 100-year simulation of 100 years of repeated applications, using the highest single maximum application rate and the highest yearly application rate.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fluoxastrobin is currently registered for the following uses that could result in residential exposures: Broadcast control of diseases on turf, including lawns and golf courses. EPA assessed residential exposure using the following assumptions:

i. *Residential handler exposure.* Residential handler exposure for adults is expected to be short-term only. Intermediate-term and chronic exposures are not likely because of the intermittent nature of applications by homeowners. Since there are no toxicity findings for the short-term dermal route of exposure up to the limit dose, the residential handler assessment only includes the inhalation route of exposure.

ii. *Post-application exposure.* There is also potential for homeowners and their families (of varying ages) to be exposed as a result of entering areas that have previously been treated with fluoxastrobin. Residential post-application exposure for adults and children is expected to be short-term only because residues are not expected to be present for longer periods of time. Exposure might occur on areas such as lawns used by children or recreational areas such as golf courses used by adults and youths. Potential routes of exposure include dermal (adults and children) and incidental oral ingestion (children). Since no acute hazard has been identified, an assessment of episodic granular ingestion was not conducted. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at: *http://www.epa.gov/pesticides/science/residential-exposure-sop.html.*

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

EPA has not found fluoxastrobin to share a common mechanism of toxicity with any other substances, and fluoxastrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluoxastrobin does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* The available studies used to evaluate pre- and postnatal exposure susceptibility do not indicate increased susceptibility of rats or rabbits to fluoxastrobin. These studies include the following:

i. Developmental toxicity studies in rats.

ii. Developmental toxicity studies in rabbits.

iii. A 2-generation reproduction study in rats.

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

i. The toxicity database for fluoxastrobin is complete. EPA waived the requirement for a subchronic inhalation data based on, among other things, its conclusion that even if an additional 10X safety factor was applied, inhalation exposure would not raise a risk of concern.

ii. There is no indication that fluoxastrobin is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that fluoxastrobin results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study. The rat developmental study was tested up to the limit dose (1,000 mg/kg/day), and the rabbit developmental study was tested up to 400 mg/kg/day (highest dose tested). At the highest dose tested, there were decreases in food consumption and body weight in the maternal animals, but there were no developmental effects. Furthermore, in the rat reproduction study, there was no sensitivity in the offspring of the pups relative to the parental animals.

iv. The exposure databases are estimated based on data that reasonably account for potential exposures. The chronic dietary food exposure assessment was slightly refined but still based on 100 PCT assumptions, tolerance-level residues, some average field-trial residues, and conservative ground water modeling estimates. New 2012 Residential Standard Operating Procedures (SOPs) were used to assess post-application exposure to children including incidental oral exposure. In addition, the Agency has obtained a Turf Transferable Residue (TTR) study, which provides slightly refined chemical-specific assumptions to estimate exposure for the hand-to-mouth post-application assessment. The assessment is still considered highly conservative because it assumes maximum application rates and conservative day zero hand-to-mouth activities.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, fluoxastrobin is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluoxastrobin from food and water will utilize 30% of the cPAD for the general population, and 66% of the cPAD for all infants <1 year old, the population subgroup with the highest estimated chronic dietary exposure to fluoxastrobin. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fluoxastrobin is not expected.

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

Fluoxastrobin is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to fluoxastrobin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 610 for adults and 110 for children (1–2 years old). Because EPA's level of concern for fluoxastrobin is a MOE of 100 or below, these MOEs are not of concern.

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

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

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, fluoxastrobin is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography/mass spectrometry/mass spectrometry) is available to enforce the tolerance expression. Method No. 00604 is available for plant commodities and Method No. 00691 is available for livestock commodities. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

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

There are no Codex maximum residue limits (MRLs) established for fluoxastrobin.

C. Revisions to Petitioned-for Tolerances

The petition requested a tolerance of 4.0 ppm for residues of fluoxastrobin and its Z-isomer on sorghum forage and stover. Based on the available residue data and using the Organisation for Economic Co-operation and Development (OECD) tolerance calculation procedure, the Agency is establishing a tolerance for these commodities at 5.0 ppm. In addition, the Agency is revising the commodity names to ''sorghum, grain, grain'', ''sorghum, grain, forage'', and ''sorghum, grain, stover'' to be consistent with the commodity vocabulary EPA generally uses for tolerances.

V. Conclusion

Therefore, tolerances are established for combined residues of fluoxastrobin and its Z-isomer in or on melon subgroup 9A and sorghum, grain, grain at 1.5 ppm; and in or on sorghum, grain, forage and sorghum, grain, stover at 5.0 ppm.

VI. Statutory and Executive Order Reviews

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

Populations'' (59 FR 7629, February 16, 1994).

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 24, 2014.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.609, add alphabetically ''melon subgroup 9A''; ''sorghum, grain, forage''; ''sorghum, grain, grain''; and ''sorghum, grain, stover'' to the table in paragraph (a)(1) as follows:

§ 180.609 Fluoxastrobin; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * * *	
Melon subgroup 9A	1.5
* * * * *	
Sorghum, grain, forage	5.0
Sorghum, grain, grain	1.5
Sorghum, grain, stover	5.0
* * * * *	

* * * * *

[FR Doc. 2014–23398 Filed 9–30–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0277; FRL–9916–44]

Tetraacetylethylenediamine and Its Metabolite, Diacetylethylenediamine; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of tetraacetylethylenediamine (TAED), and its metabolite, diacetylethylenediamine (DAED), when used as a fungicide and a bactericide on rice and strawberries. This regulation eliminates the need to establish a maximum permissible level for residues of TAED and DAED under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 1, 2014. Objections and requests for hearings must be received on or before December 1, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0277, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2013–0277 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 1, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0277, by one of the following methods:

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

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

II. Background and Statutory Findings

In the **Federal Register** of October 25, 2013 (78 FR 63938) (FRL–9901–96), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 3F8148) by Technology Sciences Group, Inc. (TSG) (the Petitioner), on behalf of Agri-Neo, Inc., 3485 Ashby Saint-Laurent (Quebec), H4R 2K3, Canada. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of TAED and its metabolite, DAED in or on all food commodities. That document referenced a summary of the petition prepared by the Petitioner, TSG, which is available in the docket, *http://www.regulations.gov.* There were no comments received on the notice of filing.

Based upon the review of the data supporting the petition, EPA is establishing a tolerance exemption on rice and strawberries rather than all food commodities as requested.

III. Final Rule

A. The EPA's Safety Determination

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that the Agency consider ''available information concerning the cumulative effects of [a particular pesticide's] . . . residues and other substances that have a common mechanism of toxicity.''

The EPA evaluated the available toxicity and exposure data on TAED and its metabolite, DAED and considered its validity, completeness, and reliability, as well as the relationship of this information to human risk. A full explanation of the data upon which the EPA relied and its risk assessment based on that data can be found within the August 29, 2014 document entitled ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for Tetraacetylethylenediamine (TAED) and its metabolite Diacetylethylenediamine (DAED).'' This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

Based upon that evaluation, the EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of TAED and its metabolite, DAED. Therefore, an exemption from the requirement of a tolerance is established for residues of TAED and its metabolite, DAED when used as a fungicide and a bactericide on rice and strawberries.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation. The Agency believes that an analytical enforcement method is not required for a tolerance exemption on rice and strawberries and there are no risk concerns for these crops. Further, residues are not expected on any other crops because rice is typically grown in areas that are not near or next to other crops. Additionally, the early planting of strawberries versus other like crops and the use of buffers limits the potential for residues of the pesticide on crops that may be near.

C. International Residue Limits

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

The Codex has not established a MRL for TAED and its metabolite, DAED.

IV. Statutory and Executive Order Reviews

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

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

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

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

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 17, 2014.

Jack E. Housenger,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Add § 180.1327 to subpart D to read as follows:

§ 180.1327 Tetraacetylethylenediamine (TAED) and its metabolite Diacetylethylenediamine (DAED); exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the pesticide, tetraacetylethylenediamine (TAED), and its metabolite diacetylethylenediamine (DAED), in or on rice and strawberries, when used as a fungicide and bactericide in accordance with label directions and good agricultural practices.

[FR Doc. 2014–23112 Filed 9–30–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1608–CN]

RIN 0938–AS09

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2015; Correction

ACTION: Final rule; Correction.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on August 6, 2014 entitled ''Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2015'' (79 FR 45872).

DATES: The corrections are effective October 1, 2014.

FOR FURTHER INFORMATION CONTACT:

Gwendolyn Johnson, (410) 786–6954, for general information.

Charles Padgett, (410) 786–2811, for information about the quality reporting program.

Kadie Thomas, (410) 786–0468, or Susanne Seagrave, (410) 786–0044, for information about the payment policies and the proposed payment rates.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2014–18447 of August 6, 2014 (79 FR 45872), there were a number of technical errors, which are identified and corrected in the ''Summary of Errors'' and ''Correction of Errors'' sections of this correction document. The provisions of this correction document are effective as if they had been included in the document published on August 6, 2014. Accordingly, the corrections are effective October 1, 2014.

II. Summary of Errors

On page 45910, in Table 8: Quality Measures Finalized in the FY 2014 IRF PPS Final Rule Affecting the FY 2016 and 2017 Adjustments to the IRF Annual Increase Factors and Subsequent Year Increase Factors, we inadvertently omitted the fiscal years affected by each of the listed quality measures, and therefore, are correcting the table.

On page 45911, in our discussion of the FY 2014 IRF PPS final rule, we made a typographical error in

identifying the **Federal Register** citation.

On page 45915, we inadvertently referred to ''future year IRP PPS increase factors'' instead of ''future year IRF PPS increase factors.''

On page 45917, in our discussion of the Continuity Assessment Record and Evaluation (CARE) items, we inadvertently provided an incorrect hyperlink to the CARE reports.

On page 45918, in Table 11: Summary of IRF QRP Measures Affecting the FY 2017 Adjustments to the IRF PPS Annual Increase Factor and Subsequent Year Increase Factors, we inadvertently omitted the superscripts at the end of the sixth and seventh bulleted items.

On page 45921, in our discussion of the IRF Quality Reporting Program (QRP) data completion thresholds, we made a technical error regarding the monthly submission of quality data. We require quarterly submission of healthcare-associated infection data for the National Health Safety Network (NHSN) Catheter-Associated Urinary Tract Infection (CAUTI) Outcome Measure (NQF #0138); quarterly submission of vaccination data for the Percent of Residents or Patients Who Were Assessed and Appropriately Given the Seasonal Influenza Vaccine (Short-Stay) (NQF #0680) measure; and annual submission of vaccination data for the Influenza Vaccination Coverage among Healthcare Personnel (NQF #0431) measure. However, the data submitted for each measure must cover each month of the applicable reporting period.

On page 45922, we made a typographical error in describing where the IRF QRP quality data items can be found in the IRF Patient Assessment Instrument (PAI) training manual.

On page 45922, in our discussion of the IRF PAI training manual, we inadvertently provided an incorrect hyperlink to the manual.

III. Waiver of Proposed Rulemaking

In accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), we ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect. However, we can waive this notice-and-comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefor into the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in the effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

This document merely corrects typographical and technical errors in the preamble of the FY 2015 IRF PPS final rule. The provisions of that final rule have been subjected to notice-and-comment procedures. The corrections contained in this document are truly technical and/or typographical and do not make substantive changes to the policies and payment methodologies that were adopted in the FY 2015 IRF PPS final rule. Therefore, we find for good cause that it is unnecessary and would be contrary to the public interest to undertake further notice-and-comment procedures to incorporate the corrections in this document into the FY 2015 IRF PPS final rule. For the same reasons, we find that there is good cause to waive the 30-day delay in the effective date for these corrections. Specifically, we believe that it is in the public interest to ensure that the FY 2015 IRF PPS final rule accurately reflects our policies as of the date they take effect. Therefore, we find that delaying the effective date of these corrections beyond the effective date of the final rule would be contrary to the public interest. In so doing, we find good cause to waive the 30-day delay in effective date.

IV. Correction of Errors

In FR Doc. 2014–18447 of August 6, 2014 (79 FR 45872), make the following corrections:

1. On page 45910, Table 8: Quality Measures Finalized in the FY 2014 IRF PPS Final Rule Affecting the FY 2016 and 2017 Adjustments to the IRF Annual Increase Factors and Subsequent Year Increase Factors, the table is corrected to read as follows:

TABLE 8—QUALITY MEASURES FINALIZED IN THE FY 2014 IRF PPS FINAL RULE AFFECTING THE FY 2016 AND 2017 ADJUSTMENTS TO THE IRF ANNUAL INCREASE FACTORS AND SUBSEQUENT YEAR INCREASE FACTORS

NQF measure ID	Measure title
NQF #0431 +	Influenza Vaccination Coverage among Healthcare Personnel (affecting the FY 2016 adjustment to the IRF annual increase factor and subsequent year increase factors).
NQF #0680*	Percent of Residents or Patients Who Were Assessed and Appropriately Given the Seasonal Influenza Vaccine (Short-Stay) (affecting the FY 2017 adjustment to the IRF annual increase factor and subsequent year increase factors).
NQF #0678*	Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short-Stay)—Adoption of the NQF-Endorsed Version of this Measure. (affecting the FY 2016 adjustment to the IRF annual increase factor and subsequent year increase factors).
NQF #2502**	All-Cause Unplanned Readmission Measure for 30 Days Post-Discharge from Inpatient Rehabilitation Facilities (affecting the FY 2016 adjustment to the IRF annual increase factor and subsequent year increase factors).

+Using the CDC NHSN.

*Using the IRF–PAI Version 1.2 that is effective on October 1, 2014; available at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Downloads/IRF-PAI-FINAL-for-Use-Oct2014-updated-v4.pdf.*

**Not NQF-endorsed, currently under review by NQF. (See *http://www.qualityforum.org/All-Cause_Admissions_and_Readmissions_Measures.aspx*)

2. On page 45911, first column, section C.1, first paragraph, lines 2 and 3, the **Federal Register** citation ''78 FR 47094'' is corrected to read ''78 FR 47904.''

3. On page 45915, first column following Table 9, first paragraph, line 3, the acronym ''IRP'' is corrected to read ''IRF.''

4. On page 45917, first column, lines 9 through 18, the hyperlink, ''*http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-CareQualityInitiatives/Downloads/The-Development-and-Testing-of-the-Continuity-Assessment-Record-and-*

Evaluation-CARE-Item-Set-Final-Report-on-the-Development-of-the-CARE-Item-Set-and-Current-Assessment-Comparisons-Volume-3-of-3.pdf.'' is corrected to read ''*http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/Downloads/The-Development-and-Testing-of-the-Continuity-Assessment-Record-and-Evaluation-CARE-Item-Set-Final-Report-on-the-Development-of-the-CARE-Item-Set-and-Current-Assessment-Comparisons-Volume-3-of-3.pdf.''*

5. On page 45917, first column, lines 19 through 27, the hyperlink, ''*http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/Downloads/The-Development-and-Testing-of-the-Continuity-Assessment-Record-and-Evaluation-CARE-Item-Set-Final-Report-on-the-Development-of-the-CARE-Item-Set-Volume-1-of-3.pdf.''* is corrected to read ''*http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/Downloads/The-Development-and-Testing-of-the-Continuity-Assessment-Record-and-Evaluation-CARE-Item-Set-Final-Report-on-the-Development-of-the-CARE-Item-Set-Volume-1-of-3.pdf.''*

6. On page 45918, Table 11: Summary of IRF QRP Measures Affecting the FY 2017 Adjustments to the IRF PPS Annual Increase Factor and Subsequent Year Increase Factors, the superscript ''+''is added at the end of ''NQF #1716: National Healthcare Safety Network (NHSN) Facility-Wide Inpatient Hospital-Onset Methicillin-Resistant *Staphylococcus aureus* (MRSA) Bacteremia Outcome Measure.''

7. On page 45918, Table 11: Summary of IRF QRP Measures Affecting the FY 2017 Adjustments to the IRF PPS Annual Increase Factor and Subsequent Year Increase Factors, the superscript ''+''is added at the end of ''NQF #1717: National Healthcare Safety Network (NHSN) Facility-Wide Inpatient Hospital-Onset *Clostridium difficile* Infection (CDI) Outcome Measure.''

8. On page 45921, first column, section J, first paragraph, lines 17 through 20, the phrase ''monthly submission of such quality data for the healthcare-associated infection or vaccination data'' is corrected to read ''submission of healthcare-associated infection or vaccination data covering each month of the applicable reporting period.''

9. On page 45922, first column, line 8, the phrase ''Chapter 4'' is corrected to read ''Section 4.''

10. On page 45922, first column, lines 11 through 15, the hyperlink, ''*http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/''* ''is corrected to read ''*http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/IRF-Quality-Reporting/Training.html.''*

Dated: September 25, 2014.

C'Reda Weeden,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2014–23382 Filed 9–30–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 430, 431, 433, 435, 436, and 440

Medicare and Medicaid Program; Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction

CFR Correction

■ In Title 42 of the Code of Federal Regulations, Parts 430 to 481, revised as of October 1, 2013, in parts 430, 431, 433, 435, 436, and 440, make the following changes:

§§ 430.25, 431.120, 431.151, 431.153, 433.56, 435.217, 436.217, 440.1, 440.150 [Corrected]

In section	Remove	Add
430.25(c)(2)	ICF/IIDIID	ICF/IID.
431.120(a)(3)	ICF/IIDIID	ICF/IID.
431.151(a)(2) and (a)(3)	ICF/IIDIID	ICF/IID.
431.153(e)(1) introductory text	ICF/IIDIID	ICF/IID.
431.153(e)(1) introductory text, and (e)(1)(ii)	ICF/IIDICF/IID	ICF/IID.
433.56(a)(4)	ICF/IIDICF/IIDs	ICF/IIDs.
435.217(b)(1)	ICF/IIDICF/IID	ICF/IID.
436.217(b)(1)	ICF/IIDICF/IID	ICF/IID.
440.1, in the entry for ''1915(c)''	ICF/IIDICF/IID	ICF/IID.
440.150 heading (both places where it appears), and (a) introductory text, and (a)(2).	ICF/IIDICF/IID	ICF/IID.

[FR Doc. 2014–23531 Filed 9–30–14; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–8351]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by

publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR Part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Pennsylvania:				
Alba, Borough of, Bradford County	420166	August 26, 1975, Emerg; July 23, 1982, Reg; October 16, 2014, Susp.	Oct. 16, 2014	Oct. 16, 2014.
Albany, Township of, Bradford County	421047	August 26, 1975, Emerg; May 1, 1986, Reg; October 16, 2014, Susp.	.....do*	Do.
Asylum, Township of, Bradford County	421048	June 10, 1975, Emerg; August 15, 1980, Reg; October 16, 2014, Susp.	.....do	Do.
Athens, Borough of, Bradford County ...	420167	November 17, 1972, Emerg; March 15, 1977, Reg; October 16, 2014, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Athens, Township of, Bradford County	420976	January 30, 1974, Emerg; April 1, 1980, Reg; October 16, 2014, Susp.	.....do	Do.
Burlington, Borough of, Bradford County.	420168	August 7, 1975, Emerg; September 5, 1990, Reg; October 16, 2014, Susp.	.....do	Do.
Burlington, Township of, Bradford County.	421054	September 14, 1983, Emerg; September 5, 1990, Reg; October 16, 2014, Susp.	.....do	Do.
Canton, Borough of, Bradford County ...	420169	August 21, 1974, Emerg; May 1, 1986, Reg; October 16, 2014, Susp.	.....do	Do.
Canton, Township of, Bradford County	421397	May 10, 1976, Emerg; June 11, 1982, Reg; October 16, 2014, Susp.	.....do	Do.
Columbia, Township of, Bradford County.	421059	August 20, 1975, Emerg; September 1, 1986, Reg; October 16, 2014, Susp.	.....do	Do.
Franklin, Township of, Bradford County	421398	March 12, 1976, Emerg; September 24, 1982, Reg; October 16, 2014, Susp.	.....do	Do.
Granville, Township of, Bradford County	421066	October 28, 1975, Emerg; May 1, 1986, Reg; October 16, 2014, Susp.	.....do	Do.
LeRaysville, Borough of, Bradford County.	422334	October 10, 1979, Emerg; February 20, 1981, Reg; October 16, 2014, Susp.	.....do	Do.
LeRoy, Township of, Bradford County ..	421076	March 16, 1976, Emerg; May 1, 1986, Reg; October 16, 2014, Susp.	.....do	Do.
Litchfield, Township of, Bradford County	421400	August 6, 1975, Emerg; October 1, 1986, Reg; October 16, 2014, Susp.	.....do	Do.
Monroe, Borough of, Bradford County ..	420170	April 5, 1973, Emerg; July 16, 1980, Reg; October 16, 2014, Susp.	.....do	Do.
Monroe, Township of, Bradford County	421083	June 30, 1976, Emerg; September 1, 1986, Reg; October 16, 2014, Susp.	.....do	Do.
New Albany, Borough of, Bradford County.	420172	August 14, 1975, Emerg; September 1, 1986, Reg; October 16, 2014, Susp.	.....do	Do.
North Towanda, Township of, Bradford County.	421087	August 6, 1975, Emerg; April 1, 1981, Reg; October 16, 2014, Susp.	.....do	Do.
Orwell, Township of, Bradford County ..	421401	January 7, 1981, Emerg; September 1, 1986, Reg; October 16, 2014, Susp.	.....do	Do.
Overton, Township of, Bradford County	421402	May 31, 1979, Emerg; May 1, 1986, Reg; October 16, 2014, Susp.	.....do	Do.
Pike, Township of, Bradford County	421403	December 3, 1979, Emerg; May 1, 1986, Reg; October 16, 2014, Susp.	.....do	Do.
Ridgebury, Township of, Bradford County.	420173	May 29, 1973, Emerg; April 1, 1981, Reg; October 16, 2014, Susp.	.....do	Do.
Rome, Borough of, Bradford County	420174	August 22, 1975, Emerg; February 1, 1985, Reg; October 16, 2014, Susp.	.....do	Do.
Rome, Township of, Bradford County ...	422639	January 6, 1976, Emerg; September 1, 1986, Reg; October 16, 2014, Susp.	.....do	Do.
Sayre, Borough of, Bradford County	420175	February 19, 1974, Emerg; April 15, 1977, Reg; October 16, 2014, Susp.	.....do	Do.
Sheshequin, Township of, Bradford County.	421102	April 22, 1975, Emerg; January 2, 1981, Reg; October 16, 2014, Susp.	.....do	Do.
Smithfield, Township of, Bradford County.	421104	December 5, 1980, Emerg; September 1, 1986, Reg; October 16, 2014, Susp.	.....do	Do.
South Creek, Township of, Bradford County.	421105	October 15, 1975, Emerg; September 5, 1990, Reg; October 16, 2014, Susp.	.....do	Do.
South Waverly, Borough of, Bradford County.	420176	September 11, 1974, Emerg; June 18, 1980, Reg; October 16, 2014, Susp.	.....do	Do.
Springfield, Township of, Bradford County.	421109	September 30, 1975, Emerg; May 1, 1986, Reg; October 16, 2014, Susp.	.....do	Do.
Standing Stone, Township of, Bradford County.	421406	March 9, 1977, Emerg; September 18, 1987, Reg; October 16, 2014, Susp.	.....do	Do.
Stevens, Township of, Bradford County	421407	April 8, 1981, Emerg; September 1, 1986, Reg; October 16, 2014, Susp.	.....do	Do.
Sylvania, Borough of, Bradford County	420177	February 5, 1974, Emerg; April 3, 1978, Reg; October 16, 2014, Susp.	.....do	Do.
Terry, Township of, Bradford County	421111	November 28, 1975, Emerg; June 18, 1990, Reg; October 16, 2014, Susp.	.....do	Do.
Towanda, Borough of, Bradford County	420178	May 27, 1975, Emerg; March 16, 1981, Reg; October 16, 2014, Susp.	.....do	Do.
Towanda, Township of, Bradford County.	421113	April 4, 1977, Emerg; August 17, 1981, Reg; October 16, 2014, Susp.	.....do	Do.
Troy, Borough of, Bradford County	420179	July 11, 1975, Emerg; January 1, 1982, Reg; October 16, 2014, Susp.	.....do	Do.
Troy, Township of, Bradford County	421114	August 22, 1975, Emerg; December 15, 1990, Reg; October 16, 2014, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Tuscarora, Township of, Bradford County.	421116	March 22, 1976, Emerg; October 22, 1982, Reg; October 16, 2014, Susp.	.....do	Do.
Ulster, Township of, Bradford County ...	421218	July 29, 1975, Emerg; September 18, 1987, Reg; October 16, 2014, Susp.	.....do	Do.
Warren, Township of, Bradford County	421408	March 1, 1977, Emerg; September 1, 1986, Reg; October 16, 2014, Susp.	.....do	Do.
Wells, Township of, Bradford County	421121	October 10, 1974, Emerg; September 5, 1990, Reg; October 16, 2014, Susp.	.....do	Do.
West Burlington, Township of, Bradford County.	421122	September 11, 1975, Emerg; September 5, 1990, Reg; October 16, 2014, Susp.	.....do	Do.
Wilmot, Township of, Bradford County	421124	March 23, 1976, Emerg; July 16, 1990, Reg; October 16, 2014, Susp.	.....do	Do.
Windham, Township of, Bradford County.	421409	March 22, 1976, Emerg; July 3, 1990, Reg; October 16, 2014, Susp.	.....do	Do.
Wyalusing, Borough of, Bradford County.	420180	August 7, 1975, Emerg; July 16, 1990, Reg; October 16, 2014, Susp.	.....do	Do.
Wyalusing, Township of, Bradford County.	421126	March 9, 1976, Emerg; July 16, 1990, Reg; October 16, 2014, Susp.	.....do	Do.
Wysox, Township of, Bradford County ..	420977	September 26, 1973, Emerg; February 1, 1978, Reg; October 16, 2014, Susp.	.....do	Do.
Region V				
Indiana:				
Bluffton, City of, Wells County	180289	May 13, 1975, Emerg; July 18, 1983, Reg; October 16, 2014, Susp.	.....do	Do.
Corydon, Town of, Harrison County	180086	January 30, 1975, Emerg; July 18, 1983, Reg; October 16, 2014, Susp.	.....do	Do.
Crandall, Town of, Harrison County	180416	March 18, 1975, Emerg; December 7, 1984, Reg; October 16, 2014, Susp.	.....do	Do.
Ferdinand, Town of, Dubois County	180484	September 10, 1980, Emerg; March 22, 1982, Reg; October 16, 2014, Susp.	.....do	Do.
Harrison County, Unincorporated Areas	180085	March 19, 1975, Emerg; November 1, 1995, Reg; October 16, 2014, Susp.	.....do	Do.
Huntingburg, City of, Dubois County	180362	April 1, 1976, Emerg; September 16, 1988, Reg; October 16, 2014, Susp.	.....do	Do.
Jasper, City of, Dubois County	180055	June 24, 1971, Emerg; June 1, 1982, Reg; October 16, 2014, Susp.	.....do	Do.
Lanesville, Town of, Harrison County ...	180420	April 28, 1975, Emerg; January 4, 1985, Reg; October 16, 2014, Susp.	.....do	Do.
Markle, Town of, Huntington and Wells Counties.	180457	N/A, Emerg; November 7, 1991, Reg; October 16, 2014, Susp.	.....do	Do.
Mauckport, Town of, Harrison County ..	180403	February 20, 1975, Emerg; July 5, 1983, Reg; October 16, 2014, Susp.	.....do	Do.
New Amsterdam, Town of, Harrison County.	180308	March 6, 1975, Emerg; July 5, 1983, Reg; October 16, 2014, Susp.	.....do	Do.
Ossian, Town of, Wells County	180290	April 14, 1975, Emerg; May 25, 1978, Reg; October 16, 2014, Susp.	.....do	Do.
Vera Cruz, Town of, Wells County	180293	August 7, 1975, Emerg; April 1, 1988, Reg; October 16, 2014, Susp.	.....do	Do.
Wells County, Unincorporated Areas	180288	April 12, 1976, Emerg; June 1, 1983, Reg; October 16, 2014, Susp.	.....do	Do.
Michigan: Bay Mills, Township of, Chippewa County.	260374	September 10, 1982, Emerg; July 3, 1986, Reg; October 16, 2014, Susp.	.....do	Do.
Bruce, Township of, Chippewa County	260375	November 25, 1986, Emerg; September 30, 1988, Reg; October 16, 2014, Susp.	.....do	Do.
DeTour, Township of, Chippewa County	260775	September 26, 1986, Emerg; September 30, 1987, Reg; October 16, 2014, Susp.	.....do	Do.
Drummond Island, Township of, Chippewa County.	260803	April 16, 1987, Emerg; April 3, 2001, Reg; October 16, 2014, Susp.	.....do	Do.
Raber, Township of, Chippewa County	260786	December 16, 1986, Emerg; September 30, 1988, Reg; October 16, 2014, Susp.	.....do	Do.
Sault Sainte Marie, City of, Chippewa County.	260059	January 15, 1975, Emerg; May 4, 1988, Reg; October 16, 2014, Susp.	.....do	Do.
Soo, Township of, Chippewa County	260378	November 13, 1986, Emerg; January 6, 1988, Reg; October 16, 2014, Susp.	.....do	Do.
Superior, Township of, Chippewa County.	260380	November 25, 1986, Emerg; September 1, 1988, Reg; October 16, 2014, Susp.	.....do	Do.
Whitefish, Township of, Chippewa County.	260321	November 22, 1974, Emerg; July 1, 1987, Reg; October 16, 2014, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region VI				
Texas:				
Calhoun County, Unincorporated Areas	480097	March 19, 1971, Emerg; March 19, 1971, Reg; October 16, 2014, Susp.	.....do	Do.
Point Comfort, City of, Calhoun County	480098	March 14, 1975, Emerg; April 15, 1982, Reg; October 16, 2014, Susp.	.....do	Do.
Port Lavaca, City of, Calhoun County ...	480099	August 27, 1971, Emerg; August 27, 1971, Reg; October 16, 2014, Susp.	.....do	Do.
Region VII				
Iowa:				
Ames, City of, Story County	190254	July 25, 1974, Emerg; January 2, 1981, Reg; October 16, 2014, Susp.	.....do	Do.
Cumming, City of, Warren County	190946	N/A, Emerg; January 24, 2000, Reg; October 16, 2014, Susp.	.....do	Do.
Des Moines, City of, Polk and Warren Counties.	190227	September 6, 1974, Emerg; February 4, 1981, Reg; October 16, 2014, Susp.	.....do	Do.
Norwalk, City of, Warren County	190631	March 3, 1993, Emerg; November 20, 1998, Reg; October 16, 2014, Susp.	.....do	Do.
Story County, Unincorporated Areas	190907	June 1, 1978, Emerg; June 1, 1983, Reg; October 16, 2014, Susp.	.....do	Do.
Warren County, Unincorporated Areas	190912	November 19, 1990, Emerg; July 1, 1991, Reg; October 16, 2014, Susp.	.....do	Do.

*do = Ditto.
Code for reading third column: Emerg. —Emergency; Reg. —Regular; Susp. —Suspension.

Dated: September 12, 2014.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–23396 Filed 9–30–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–8353]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR Part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified

for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Maryland:				
Centreville, Town of, Queen Anne's County.	240056	August 6, 1975, Emerg; September 27, 1985, Reg; November 5, 2014, Susp.	Nov. 5, 2014	Nov. 5, 2014.
Church Hill, Town of, Queen Anne's County.	240057	August 20, 1975, Emerg; June 3, 1986, Reg; November 5, 2014, Susp.	.....do	Do.
Queen Anne, Town of, Queen Anne's County.	240059	October 12, 1979, Emerg; December 5, 2000, Reg; November 5, 2014, Susp.	.....do	Do.
Queen Anne's County, Unincorporated Areas.	240054	January 15, 1974, Emerg; September 28, 1984, Reg; November 5, 2014, Susp.	.....do	Do.
Queenstown, Town of, Queen Anne's County.	240120	May 1, 1975, Emerg; September 28, 1984, Reg; November 5, 2014, Susp.	.....do	Do.
Region V				
Indiana:				
Edinburgh, Town of, Shelby County	180113	February 13, 1975, Emerg; September 16, 1981, Reg; November 5, 2014, Susp.	.....do	Do.
Gibson County, Unincorporated Areas	180434	December 5, 2002, Emerg; N/A, Reg; November 5, 2014, Susp.	.....do	Do.
Griffin, Town of, Posey County	180305	May 23, 1975, Emerg; February 11, 1976, Reg; November 5, 2014, Susp.	.....do	Do.
Morristown, Town of, Shelby County	180393	April 1, 1976, Emerg; July 21, 1978, Reg; November 5, 2014, Susp.	.....do	Do.
Mount Vernon, City of, Posey County ...	180389	January 31, 1975, Emerg; January 18, 1984, Reg; November 5, 2014, Susp.	.....do	Do.
New Harmony, Town of, Posey County	180210	April 14, 1975, Emerg; July 1, 1987, Reg; November 5, 2014, Susp.	.....do	Do.
Posey County, Unincorporated Areas ...	180209	May 8, 1975, Emerg; January 1, 1987, Reg; November 5, 2014, Susp.	.....do	Do.
Princeton, City of, Gibson County	180073	March 19, 1975, Emerg; January 21, 1983, Reg; November 5, 2014, Susp.	.....do	Do.
Shelby County, Unincorporated Areas ..	180235	March 13, 1975, Emerg; October 15, 1982, Reg; November 5, 2014, Susp.	.....do	Do.
Shelbyville, City of, Shelby County	180236	April 14, 1975, Emerg; April 1, 1982, Reg; November 5, 2014, Susp.	.....do	Do.
Wisconsin:				

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Big Bend, Village of, Waukesha County	550477	August 19, 1974, Emerg; March 1, 1984, Reg; November 5, 2014, Susp.	.....do	Do.
Brookfield, City of, Waukesha County ..	550478	February 23, 1972, Emerg; August 19, 1986, Reg; November 5, 2014, Susp.	.....do	Do.
Butler, Village of, Waukesha County	550536	March 7, 1974, Emerg; May 15, 1978, Reg; November 5, 2014, Susp.	.....do	Do.
Delafield, City of, Waukesha County	550479	July 15, 1975, Emerg; August 15, 1983, Reg; November 5, 2014, Susp.	.....do	Do.
Dousman, Village of, Waukesha County	550480	June 30, 1975, Emerg; April 17, 1987, Reg; November 5, 2014, Susp.	.....do	Do.
Elm Grove, Village of, Waukesha County.	550578	May 1, 1975, Emerg; July 19, 1982, Reg; November 5, 2014, Susp.	.....do	Do.
Hartland, Village of, Waukesha County	550481	July 25, 1975, Emerg; December 1, 1982, Reg; November 5, 2014, Susp.	.....do	Do.
Lac La Belle, Village of, Waukesha County.	550565	May 25, 1976, Emerg; January 18, 1984, Reg; November 5, 2014, Susp.	.....do	Do.
Lannon, Village of, Waukesha County ..	550482	July 18, 1975, Emerg; December 1, 1982, Reg; November 5, 2014, Susp.	.....do	Do.
Menomonee Falls, Village of, Waukesha County.	550483	November 12, 1973, Emerg; September 15, 1978, Reg; November 5, 2014, Susp.	.....do	Do.
Merton, Village of, Waukesha County ...	550484	July 21, 1975, Emerg; August 3, 1989, Reg; November 5, 2014, Susp.	.....do	Do.
Milwaukee, City of, Waukesha County	550278	January 30, 1974, Emerg; March 1, 1982, Reg; November 5, 2014, Susp.	.....do	Do.
Mukwonago, Village of, Waukesha County.	550485	February 18, 1975, Emerg; July 5, 1982, Reg; November 5, 2014, Susp.	.....do	Do.
Muskego, City of, Waukesha County	550486	April 12, 1974, Emerg; December 1, 1982, Reg; November 5, 2014, Susp.	.....do	Do.
New Berlin, City of, Waukesha County	550487	May 18, 1973, Emerg; March 18, 1987, Reg; November 5, 2014, Susp.	.....do	Do.
Oconomowoc, City of, Waukesha County.	550488	May 1, 1975, Emerg; September 1, 1983, Reg; November 5, 2014, Susp.	.....do	Do.
Pewaukee, City of, Waukesha County ..	550192	N/A, Emerg; December 11, 2012, Reg; November 5, 2014, Susp.	.....do	Do.
Pewaukee, Village of, Waukesha County.	550489	March 24, 1975, Emerg; June 15, 1982, Reg; November 5, 2014, Susp.	.....do	Do.
Summit, Village of, Waukesha County ..	550663	N/A, Emerg; December 11, 2013, Reg; November 5, 2014, Susp.	.....do	Do.
Sussex, Village of, Waukesha County ..	550490	June 24, 1975, Emerg; June 19, 1989, Reg; November 5, 2014, Susp.	.....do	Do.
Waukesha, City of, Waukesha County	550491	April 2, 1974, Emerg; September 2, 1982, Reg; November 5, 2014, Susp.	.....do	Do.
Waukesha County, Unincorporated Areas.	550476	May 25, 1973, Emerg; August 1, 1983, Reg; November 5, 2014, Susp.	.....do	Do.
Region VI				
New Mexico:				
Lincoln County, Unincorporated Areas	350122	August 15, 2005, Emerg; October 1, 2009, Reg; November 5, 2014, Susp.	.....do	Do.
Ruidoso, Village of, Lincoln County	350033	July 26, 1974, Emerg; March 2, 1983, Reg; November 5, 2014, Susp.	.....do	Do.
Ruidoso Downs, City of, Lincoln County	350034	February 18, 1975, Emerg; July 5, 1982, Reg; November 5, 2014, Susp.	.....do	Do.

*do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: September 9, 2014.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–23370 Filed 9–30–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[T.D. 9697]

RIN 1545–BL90

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AB60

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[CMS–9946–F]

45 CFR Part 146

RIN 0938–AS16

Amendments to Excepted Benefits

AGENCY: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Final rules.

SUMMARY: This document contains final regulations that amend the regulations regarding excepted benefits under the Employee Retirement Income Security Act of 1974, the Internal Revenue Code (the Code), and the Public Health Service Act. Excepted benefits are generally exempt from the health reform requirements that were added to those laws by the Health Insurance Portability and Accountability Act and the Patient Protection and Affordable Care Act. In addition, eligibility for excepted benefits does not preclude an individual from eligibility for a premium tax credit under section 36B of the Code if an individual chooses to enroll in coverage under a Qualified Health Plan through an Affordable Insurance Exchange. These regulations finalize some but not all of the proposed rules with minor modifications; additional guidance on limited wraparound coverage is forthcoming.

DATES: *Effective date.* These final regulations are effective on December 1, 2014.

Applicability date. These final regulations apply to group health plans and group health insurance issuers for plan years beginning on or after January 1, 2015.

FOR FURTHER INFORMATION CONTACT: Amy Turner or Beth Baum, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335; Karen Levin, Internal Revenue Service, Department of the Treasury, at (202) 317–5500; Jacob Ackerman, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at (301) 492–4179.

Customer Service Information: Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws, may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*http://www.dol.gov/ebsa*). In addition, information from HHS on private health insurance for consumers can be found on the Centers for Medicare & Medicaid Services (CMS) Web site (*www.cms.gov/cciio*) and information on health reform can be found at *www.HealthCare.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, 110 Stat. 1936, added title XXVII of the Public Health Service Act (PHS Act), part 7 of the Employee Retirement Income Security Act of 1974 (ERISA), and chapter 100 of the Internal Revenue Code (the Code), providing portability and nondiscrimination provisions with respect to health coverage. These provisions of the PHS Act, ERISA, and the Code were later augmented by other consumer protection laws, including the Mental Health Parity Act of 1996,[1] the Mental Health Parity and Addiction Equity Act of 2008,[2] the Newborns' and Mothers' Health Protection Act,[3] the Women's Health and Cancer Rights Act,[4] the Genetic Information Nondiscrimination Act of 2008,[5] the Children's Health Insurance Program Reauthorization Act of 2009,[6] Michelle's Law,[7] and the Affordable Care Act.[8]

The Affordable Care Act reorganizes, amends, and adds to the provisions of part A of title XXVII of the PHS Act relating to group health plans and health insurance issuers in the group and individual markets. The term ''group health plan'' includes both insured and self-insured group health plans.[9] Section 715(a)(1) of ERISA and section 9815(a)(1) of the Code, as added by the Affordable Care Act, incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code to make them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans. The PHS Act sections incorporated by these references are sections 2701 through 2728.

Sections 2722 and 2763 of the PHS Act, section 732 of ERISA, and section 9831 of the Code provide that the requirements of title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code, respectively, generally do not apply to excepted benefits. Excepted benefits are described in section 2791 of the PHS Act, section 733 of ERISA, and section 9832 of the Code.

The parallel statutory provisions establish four categories of excepted benefits. The first category includes benefits that are generally not health coverage[10] (such as automobile insurance, liability insurance, workers compensation, and accidental death and dismemberment coverage). The benefits in this category are excepted in all circumstances. In contrast, the benefits in the second, third, and fourth categories are types of health coverage but are excepted only if certain conditions are met.

The second category of excepted benefits is limited excepted benefits, which may include limited-scope vision or dental benefits, and benefits for long-term care, nursing home care, home health care, or community-based care.

[1] Public Law 104–204, 110 Stat. 2944 (September 26, 1996).

[2] Public Law 110–343, 122 Stat. 3881 (October 3, 2008).

[3] Public Law 104–204, 110 Stat. 2935 (September 26, 1996).

[4] Public Law 105–277, 112 Stat. 2681–436 (October 21, 1998).

[5] Public Law 110–233, 122 Stat. 881 (May 21, 2008).

[6] Public Law 111–3, 123 Stat. 65 (February 4, 2009).

[7] Public Law 110–381, 122 Stat. 4081 (October 9, 2008).

[8] The Patient Protection and Affordable Care Act, Public Law 111–148, was enacted on March 23, 2010, and the Health Care and Education Reconciliation Act, Public Law 111–152, was enacted on March 30, 2010. (These statutes are collectively known as the ''Affordable Care Act''.)

[9] The term ''group health plan'' is used in title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code, and is distinct from the term ''health plan,'' as used in other provisions of title I of the Affordable Care Act. The term ''health plan'' does not include self-insured group health plans.

[10] See 62 FR 16894, 16903 (Apr. 8, 1997), which states that these benefits are generally not health insurance coverage.

Section 2791(c)(2)(C) of the PHS Act, section 733(c)(2)(C) of ERISA, and section 9832(c)(2)(C) of the Code authorize the Secretaries of Health and Human Services (HHS), Labor, and the Treasury (collectively, the Secretaries) to issue regulations establishing other similar limited benefits as excepted benefits. The Secretaries exercised this authority previously with respect to certain health flexible spending arrangements (health FSAs).[11] To be excepted under this second category, the statute (specifically, ERISA section 732(c)(1), PHS Act section 2722(c)(1), and section 9831(c)(1) of the Code) provides that limited benefits must either: (1) Be provided under a separate policy, certificate, or contract of insurance; or (2) otherwise not be an integral part of a group health plan, whether insured or self-insured.

The third category of excepted benefits, referred to as ''noncoordinated excepted benefits,'' includes both coverage for only a specified disease or illness (such as cancer-only policies), and hospital indemnity or other fixed indemnity insurance. In the group market, these benefits are excepted only if all of the following conditions are met: (1) The benefits are provided under a separate policy, certificate, or contract of insurance; (2) there is no coordination between the provision of such benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor; and (3) the benefits are paid with respect to any event without regard to whether benefits are provided under any group health plan maintained by the same plan sponsor.[12]

The fourth category of excepted benefits is supplemental excepted benefits. Such benefits must be: (1) Coverage supplemental to Medicare, coverage supplemental to the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) or to Tricare, or similar coverage that is supplemental to coverage provided under a group health plan; and (2) provided under a separate policy, certificate, or contract of insurance.[13]

In 2004, the Departments of the Treasury, Labor, and HHS published final regulations with respect to excepted benefits (the HIPAA regulations).[14] (Subsequent references to the ''Departments'' include all three Departments, unless the headings or context indicate otherwise.) On December 24, 2013, the Departments issued proposed regulations with respect to the second category of excepted benefits, limited excepted benefits (2013 proposed regulations).[15] The 2013 proposed regulations proposed to: (1) Eliminate the requirement that participants pay an additional premium or contribution for limited-scope vision or dental benefits to qualify as benefits that are not an integral part of the plan; (2) set forth the criteria under which employee assistance programs (EAPs) constitute excepted benefits; and (3) allow plan sponsors in limited circumstances to offer, as excepted benefits, coverage that wraps around certain individual health insurance coverage. The Departments stated that, until rulemaking is finalized, through at least 2014, for purposes of enforcing the provisions of title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code, the Departments will consider dental and vision benefits and EAP benefits meeting the conditions of the 2013 proposed regulations to qualify as excepted benefits.

After consideration of comments on the 2013 proposed regulations, the Departments are publishing final regulations regarding dental and vision benefits and EAP benefits. The Departments also intend to publish regulations that address limited wraparound coverage in the future, taking into account the extensive comments received on this issue.

II. Overview of the Final Regulations

A. Dental and Vision Benefits

Under the HIPAA regulations, vision and dental benefits are excepted if they are limited in scope (described as benefits, substantially all of which are for treatment of the eyes or mouth, respectively) and are either: (1) Provided under a separate policy, certificate, or contract of insurance; or (2) are otherwise not an integral part of a group health plan. While only insured coverage may qualify under the first test, both insured and self-insured coverage may qualify under the second test. The HIPAA regulations provided that benefits are not an integral part of a plan if participants have the right to elect not to receive coverage for the benefits, and, if participants elect to receive coverage for such benefits, they pay an additional premium or contribution for the coverage. By contrast, health FSA benefits could qualify as excepted benefits without any participant contribution under the HIPAA regulations.[16]

As stated in the preamble to the 2013 proposed regulations, following enactment of the Affordable Care Act, various stakeholders asked the Departments to amend the HIPAA regulations in order to remove conditions for limited-scope vision and dental benefits to be treated as excepted benefits. Specifically, some employers represented that, although their vision and dental benefits complied with the pre-Affordable Care Act requirements in title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code (such as the nondiscrimination and preexisting condition exclusion provisions), compliance with certain Affordable Care Act provisions presented additional challenges. These employers argued that, where employers are providing such benefits on a self-insured basis and without a contribution from employees, employers should not be required to charge a nominal contribution from participants simply for the benefits to qualify as excepted benefits. In some cases, the cost of collecting the nominal contribution would be greater than the contribution itself. Moreover, they pointed out that employers providing dental and vision benefits through a separate insurance policy are not required to charge a participant any premium or contribution in order for the dental or vision benefits to be considered excepted benefits. Similarly, consumer groups argued that, if an employer offers primary group health coverage that is treated as unaffordable under the Code, but offers limited-scope vision or dental coverage, such limited-scope vision or dental coverage should qualify as excepted benefits so as not to make such individuals ineligible to receive a premium tax credit under section 36B of the Code if they enroll in

[11] 26 CFR 54.9831–1(c)(3)(v); 29 CFR 2590.732(c)(3)(v); 45 CFR 146.145(b)(3)(v).

[12] 26 CFR 54.9831–1(c)(4); 29 CFR 2590.732(c)(4); 45 CFR 146.145(b)(4). *See also* Q7 in FAQs about Affordable Care Act Implementation Part XI, available at *http://www.dol.gov/ebsa/faqs/faq-aca11.html.*

[13] 26 CFR 54.9831–1(c)(5); 29 CFR 2590.732(c)(5); 45 CFR 146.145(b)(5). The Departments issued additional guidance regarding supplemental health insurance coverage as excepted benefits. *See* EBSA Field Assistance Bulletin No. 2007–04 (available at *http://www.dol.gov/ebsa/pdf/fab2007-4.pdf*); CMS Insurance Standards Bulletin 08–01 (available at *http://www.cms.gov/CCIIO/Resources/Files/Downloads/hipaa_08_01_508.pdf*); and IRS Notice 2008–23 (available at *http://www.irs.gov/irb/2008-07_IRB/ar09.html*).

[14] 69 FR 78720 (Dec. 30, 2004).

[15] 78 FR 77632.

[16] Under the HIPAA regulations, benefits provided under a health FSA are only excepted for a class of participants if other group health coverage, not limited to excepted benefits, is made available for the year to the class of participants; and the arrangement is structured so that the maximum benefit payable to any participant in the class for a year does not exceed an amount specified in the regulations.

coverage under a Qualified Health Plan (QHP) through an Affordable Insurance Exchange, or ''Exchange'' (also called a Health Insurance Marketplace or Marketplace).

In response to these concerns, and to achieve greater consistency between insured and self-insured coverage, the 2013 proposed regulations proposed eliminating the requirement under the HIPAA regulations that participants pay an additional premium or contribution for limited-scope vision or dental benefits to qualify as benefits that are not an integral part of a plan (and therefore to qualify as excepted benefits).

The Departments invited comments on this approach. Many comments supported the concept of achieving greater consistency regarding the excepted benefits requirements for dental and vision benefits between insured and self-insured plans. One comment argued that the proposal undermined the inclusion of pediatric vision and dental coverage as an essential health benefit. Other comments requested clarification as to whether separately-administered and stand-alone dental and vision benefits offered separate from, or without a connection to, a primary plan could qualify as excepted benefits.

Consistent with the 2013 proposed regulations, these final regulations eliminate the requirement under the HIPAA regulations that participants pay an additional premium or contribution for limited-scope vision or dental benefits to qualify as excepted benefits. As explained in the preamble to the 2013 proposed regulations, without this change, an employer that establishes or maintains a self-insured plan could be required to charge a nominal contribution from participants simply for limited-scope vision and dental benefits to qualify as excepted benefits and, in some cases, the cost of collecting the nominal contribution would be greater than the contribution itself. In addition, if an employer offers primary group health coverage that is unaffordable to individuals, but limited-scope vision or dental coverage, without this modification, accepting the vision or dental coverage could make such individuals ineligible to receive a premium tax credit under section 36B of the Code if they enroll in coverage under a QHP through the Exchange.

In addition, it is the Departments' view that the final regulations do not undermine the inclusion of pediatric vision or dental coverage as essential health benefits. The requirement that issuers in the small group market offer coverage of essential health benefits is not changed, and that rule does not apply to large or self-insured plans. Moreover, PHS Act section 2711 (as incorporated into ERISA by section 715 and the Code by section 9815) allows self-insured plans to choose any definition of essential health benefits that is authorized by the Secretary of HHS for purposes of the prohibition on lifetime or annual dollar limits on essential health benefits.[17]

These final regulations clarify that limited-scope vision or dental benefits do not have to be offered in connection with a separate offer of major medical or ''primary'' group health coverage under the plan, in order to meet the statutory criterion that such benefits are ''otherwise not an integral part of the plan.'' To meet this criterion, limited-scope vision or dental benefits can be provided without connection to a primary plan, or the limited-scope vision or dental benefits can be offered separately from the major medical or ''primary'' coverage under the plan (as described in these final regulations). Under the 2013 proposed regulations, in order to satisfy the statutory excepted benefits criterion that such benefits cannot otherwise be ''an integral part of the plan,'' participants must be able to decline coverage. These final regulations provide that this criterion is satisfied if participants may decline coverage or the claims for the benefits are administered under a contract separate from claims administration for any other benefits under the plan.

While coverage for long-term care benefits is not the focus of this rule, such benefits are also subject to the ''not an integral part of a group health plan'' standard in order to be classified as excepted benefits. Accordingly, the revisions discussed in this section of the preamble also apply to coverage of long-term care benefits.

B. Employee Assistance Programs

EAPs are typically programs offered by employers that can provide a wide-ranging set of benefits to address circumstances that might otherwise adversely affect employees' work and health. Benefits may include referral services and short-term substance use disorder or mental health counseling, as well as financial counseling and legal services. They are typically available free of charge to employees and are often provided through third-party vendors. Benefits for medical care provided through an EAP would generally be considered group health plan coverage (and, therefore, minimum essential coverage), which would generally be subject to the HIPAA and Affordable Care Act market reform requirements (and could make individuals receiving benefits under an EAP ineligible to receive a premium tax credit under section 36B of the Code if they enroll in coverage under a QHP through the Exchange), unless the EAP meets the criteria for being excepted benefits.

Since enactment of the Affordable Care Act, various stakeholders have asked the Departments to treat EAPs as excepted benefits for reasons analogous to the arguments described above with respect to vision and dental benefits. Specifically, some employers represented that compliance with the prohibition on annual dollar limits could be problematic as such benefits are typically very limited, and that EAPs generally are intended to provide benefits in addition to those provided under other group health plans sponsored by employers. Moreover, consumer groups have represented that EAPs with very limited benefits, which may be the only coverage offered to employees, could make such employees ineligible to receive a premium tax credit under section 36B of the Code if they enroll in coverage under a QHP through the Exchange. At the same time, the Departments recognize that no universal definition exists for EAPs, and are concerned that employers not act to shift primary coverage to a separate ''EAP plan,'' exempt from the consumer protection provisions of title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code, including the mental health parity provisions.[18]

In guidance issued on September 13, 2013, the Departments stated their intent to amend the excepted benefits regulations with respect to EAPs.[19] The guidance also provided transition relief, stating, ''[u]ntil rulemaking is finalized, through at least 2014, the Departments will consider an employee assistance program or EAP to constitute excepted benefits only if the employee assistance

[17] *See* CMS, Frequently Asked Questions on Essential Health Benefits Bulletin, Q10 (February 17, 2012) *http://www.cms.gov/CCIIO/Resources/Files/Downloads/ehb-faq-508.pdf.*

[18] The mental health parity provisions are included in PHS Act section 2726, ERISA section 712, and Code section 9812. *See also* final regulations on mental health parity, published at 78 FR 68239 (November 13, 2013).

[19] *See* IRS Notice 2013–54 (available at *http://www.irs.gov/pub/irs-drop/n-13–54.pdf*) and DOL Technical Release 2013–03 (available at *http://www.dol.gov/ebsa/newsroom/tr13–03.html*), Q&A 9. *See also* CMS Insurance Standards Bulletin—Application of Affordable Care Act Provisions to Certain Healthcare Arrangements (available at *http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/cms-hra-notice-9-16-2013.pdf*).

program or EAP does not provide significant benefits in the nature of medical care or treatment. For this purpose, employers may use a reasonable, good faith interpretation of whether an employee assistance program or EAP provides significant benefits in the nature of medical care or treatment.''

The 2013 proposed regulations set forth criteria for an EAP to qualify as excepted benefits beginning in 2015. Under the 2013 proposed regulations, benefits provided under EAPs are excepted if four criteria are met. First, the program cannot provide significant benefits in the nature of medical care. The Departments invited comments on how to define ''significant.'' For example, the Departments requested comments as to whether a program that provides no more than 10 outpatient visits for mental health or substance use disorder counseling, an annual wellness checkup, immunizations, and diabetes counseling, with no inpatient care benefits, should be considered to provide significant benefits in the nature of medical care.[20]

The second proposed criterion for an EAP to constitute excepted benefits under the 2013 proposed regulations is that its benefits cannot be coordinated with benefits under another group health plan. The Departments outlined three conditions to meet this proposed criterion: (i) participants in the separate group health plan must not be required to exhaust benefits under the EAP (making the EAP a ''gatekeeper'') before an individual is eligible for benefits under the other group health plan; (ii) participant eligibility for benefits under the EAP must not be dependent on participation in another group health plan; and (iii) benefits under the EAP must not be financed by another group health plan.

The third proposed criterion for an EAP to constitute excepted benefits under the 2013 proposed regulations is that no employee premiums or contributions be required to participate in the EAP. The fourth proposed criterion is that there is no cost sharing under the EAP.

The criteria in the 2013 proposed regulations were intended to ensure that employers are able to continue offering EAPs as supplemental benefits to other coverage, and to ensure that in circumstances in which an EAP with limited benefits is the only coverage, or the only affordable coverage provided to an employee, that the coverage does not unreasonably disqualify an employee from potential eligibility to receive a premium tax credit under section 36B of the Code if the employee enrolls in coverage under a QHP through the Exchange. The Departments requested comments on whether the criteria proposed are sufficient to prevent the potential for abuse, including the evasion of compliance with the mental health parity provisions, and whether different or additional standards should be included.

The Departments received a number of comments relating to the treatment of EAPs as excepted benefits. While the comments generally supported treating EAPs as excepted benefits, there were many suggestions for clarifying or modifying the specific requirements in the 2013 proposed regulations for EAPs to constitute excepted benefits. In particular, many comments included suggestions for clarifying what is meant by significant benefits in the nature of medical care. Most of these comments raised concerns about the suggestion in the preamble to propose using numerical limits on the number of visits.

Some comments requested that EAPs be allowed to provide wellness and disease management programs, provided such programs do not provide significant benefits in the nature of medical care. However, treating wellness programs as excepted benefits by including them in an EAP would circumvent consumer protections contained in the statutory standards for wellness programs under section 2705(j) of the PHS Act as enacted by the Affordable Care Act. This suggestion is not adopted in these final regulations.

Several comments opposed the prohibition in the 2013 proposed regulations on an EAP being financed by the other group health plan to qualify as excepted benefits. In particular, the comments noted that often the EAP and the group health plan are financed by a single payment or otherwise combined, and the requirement would result in disruptions of existing commercial arrangements. Moreover, these comments noted, the other requirements sufficiently protected against inappropriate coordination of the EAP benefits with the benefits of the other group health plan. In addition, there were a number of comments concerning EAPs that were beyond the scope of the 2013 proposed regulations.

After consideration of the comments, the Departments are finalizing the proposal, with one modification related to financing, described below.[21] As with the 2013 proposed regulations, these final regulations provide that, for an EAP to constitute excepted benefits, the EAP must satisfy four requirements.

The first requirement of the 2013 proposed regulations and these final regulations is that the EAP does not provide significant benefits in the nature of medical care. For this purpose, the amount, scope, and duration of covered services are taken into account. For example, an EAP that provides only limited, short-term outpatient counseling for substance use disorder services (without covering inpatient, residential, partial residential or intensive outpatient care) without requiring prior authorization or review for medical necessity does not provide significant benefits in the nature of medical care. At the same time, a program that provides disease management services (such as laboratory testing, counseling, and prescription drugs) for individuals with chronic conditions, such as diabetes, does provide significant benefits in the nature of medical care. The Departments may, through guidance, provide additional clarification in the future regarding when a program provides significant benefits in the nature of medical care.

The second requirement of these final regulations is that for an EAP to constitute excepted benefits, its benefits cannot be coordinated with the benefits under another group health plan. This requirement has two elements: (1)

[20] Other examples of EAPs that do not provide significant benefits in the nature of medical care, discussed in IRS Notice 2004–50 Q&A–10 include (1) an EAP with benefits that consist primarily of free or low-cost confidential short-term counseling (which could address substance abuse, alcoholism, mental health or emotional disorders, financial or legal difficulties, and dependent care needs) to identify an employee's problem that may affect job performance and, when appropriate, referrals to an outside organization, facility or program to assist the employee in resolving the problem; and (2) a wellness program that provides a wide-range of education and fitness services (also including sports and recreation activities, stress management, and health screenings) designed to improve the overall health of the employees and prevent illness, where any costs charged to the individual for participating in the services are separate from the individual's coverage under the health plan.

[21] In the 2013 proposed regulations, the requirements regarding EAPs were proposed in paragraph (c)(3)(vii) of 26 CFR 54.9831–1, 29 CFR 2590.732, and 45 CFR 146.145. However, HHS regulations published on October 30, 2013 and effective December 30, 2013 redesignated 45 CFR 146.145(c) as paragraph (b) (78 FR at 65092). Additionally, because these regulations are finalizing only the requirements related to dental and vision benefits and EAP benefits, these final regulations have been renumbered so that the requirements regarding EAPs are now contained in paragraph (c)(3)(vi) of 26 CFR 54.9831–1 and 29 CFR 2590.732, and in paragraph (b)(3)(vi) of 45 CFR 146.145. As stated earlier in this preamble, the Departments also intend to publish regulations that address limited wraparound coverage in the future, taking into account the extensive comments received on this issue. Those provisions are intended to be codified in paragraph (c)(3)(vii) of 26 CFR 54.9831–1 and 29 CFR 2590.732, and in paragraph (b)(3)(vii) of 45 CFR 146.145.

Participants in the other group health plan must not be required to use and exhaust benefits under the EAP (making the EAP a ''gatekeeper'') before an individual is eligible for benefits under the other group health plan; and (2) participant eligibility for benefits under the EAP must not be dependent on participation in another group health plan. In response to comments, these final regulations do not include the requirement set forth in the 2013 proposed regulations that EAP benefits cannot be financed by another group health plan in order to qualify as excepted benefits.

The third requirement of the 2013 proposed regulations and these final regulations for EAPs to constitute excepted benefits is that no employee premiums or contributions may be required as a condition of participation in the EAP. Finally, as with the 2013 proposed regulations, the final regulations provide that an EAP that constitutes excepted benefits may not impose any cost-sharing requirements.

C. Applicability Date and Reliance

In the preamble to the 2013 proposed regulations, the Departments stated that, until rulemaking is finalized, through at least 2014, for purposes of enforcing the provisions of title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code, the Departments will consider dental and vision benefits, and EAP benefits, meeting the conditions of the 2013 proposed regulations to qualify as excepted benefits and that, to the extent final regulations or other guidance with respect to vision or dental benefits or EAPs is more restrictive on plans and issuers than the 2013 proposed regulations, the final regulations or other guidance will not be effective prior to January 1, 2015. These final regulations apply to group health plans and group health insurance issuers for plan years beginning on or after January 1, 2015. They do not apply to health insurance issuers offering individual health insurance coverage. Until the applicability date of these final regulations, the Departments will consider dental and vision benefits and EAP benefits meeting the conditions of the 2013 proposed regulations or these final regulations to qualify as excepted benefits.

III. Economic Impact and Paperwork Burden

A. Summary—Department of Labor and Department of Health and Human Services

As stated above, these final regulations eliminate the requirement under the HIPAA regulations that participants pay an additional premium or contribution for limited-scope vision or dental benefits to qualify as excepted benefits, and set forth four requirements for an EAP to constitute excepted benefits.

B. Executive Order 12866—Department of Labor and Department of Health and Human Services

OMB has determined that this regulatory action is significant within the meaning of section 3(f)(4) of the Executive Order, and the Departments accordingly provide the following assessment of its potential benefits and costs. The Departments expect the impact of these final regulations to be limited.

Specifically, with respect to vision and dental benefits, the final regulations allow group health plans to offer dental and vision benefits to employees without charging a premium or contribution. As stated earlier in the preamble, this eliminates a difference that would otherwise exist between insured and self-insured coverage. With respect to EAPs, the final regulations clarify the conditions that be must be satisfied for such benefits to constitute excepted benefits, which are not subject to the group market requirements under the PHS Act, ERISA, and the Code.

Some employers represented to the Departments that compliance with the Affordable Care Act presented challenges for their limited-scope vision and dental benefits and EAPs. The clarifications provided in these final regulations will benefit employees by ensuring continued access to these benefits. The Departments expect these final regulations to have some costs, but these costs will be limited because the Departments expect the primary result of the final regulations will be that employers providing limited-scope dental and vision and EAP benefits will continue to provide such benefits and that the number of employers who will begin providing such benefits for the first time will be small.

C. Regulatory Flexibility Act—Department of Labor and Department of Health and Human Services

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 et seq.) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of the RFA, the Departments continue to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis for this definition is found in section 104(a)(2) of the act, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Pursuant to the authority of section 104(a)(3), the Department of Labor has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and satisfying certain other requirements.

Further, while some large employers may have small plans, in general small employers maintain most small plans. Thus, the Departments believe that assessing the impact of these final regulations on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 et seq.).

As noted above, the Departments expect the costs imposed by these regulations to be limited for those employers that provide dental, vision and EAP benefits, and that they will not affect employers who do not provide such benefits. The final regulations allow employers to decide based on their own costs and benefits what action to take. This is true for large and small plans alike. Accordingly, the Departments believe that these final regulations do not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to section 605(b) of the RFA, the Departments hereby certify that these final regulations will not have a significant economic impact on a substantial number of small entities.

D. Special Analyses—Department of the Treasury

For purposes of the Department of the Treasury it has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these final regulations, and, because these final regulations do not impose a collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these final regulations have been submitted to the Small Business Administration for comment on its impact on small business.

E. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*), as well as Executive Order 12875, these final regulations do not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or the private sector, which may impose an annual burden of $100 million adjusted for inflation since 1995.

F. Federalism—Department of Labor and Department of Health and Human Services

Executive Order 13132 outlines fundamental principles of federalism. It requires adherence to specific criteria by Federal agencies in formulating and implementing policies that have ''substantial direct effects'' on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these federalism implications must consult with State and local officials, and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the final regulation.

In the Departments' view, the final regulations, by clarifying policy regarding certain excepted benefits options that can be designed by employers to support their employees, would provide more certainty to employers and others in the regulated community as well as States and political subdivisions regarding the treatment of such arrangements under the PHS Act, ERISA and the Code. Through the regular course of outreach the Departments normally engage in with officials of States (and political subdivisions), the Departments are aware of no special federalism implications presented by these final regulations. The Departments will continue to conduct regular outreach activities with States.

G. Congressional Review Act

These final regulations are subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.), and will be transmitted to the Congress and to the Comptroller General for review in accordance with such provisions.

IV. Statutory Authority

The Department of the Treasury regulations are adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor regulations are adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Public Law 104–191, 110 Stat. 1936; sec. 401(b), Public Law 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Public Law 110–343, 122 Stat. 3765; Public Law 110–460, 122 Stat. 5123; Secretary of Labor's Order 1–2011, 77 FR 1088 (January 9, 2012).

The Department of Health and Human Services regulations are adopted pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

List of Subjects

26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

45 CFR Part 146

Health care, Health insurance, Reporting and recordkeeping requirements, and State regulation of health insurance.

John Dalrymple,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Approved: September 25, 2014.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

Signed this 25th day of September, 2014.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Dated: September 11, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 19, 2014.

Sylvia Burwell,

Secretary, Department of Health and Human Services.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Accordingly, 26 CFR part 54 is amended as follows:

PART 54—PENSION EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 54 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805. * * *

Section 54.9831–1 is also issued under 26 U.S.C. 9833; * * *

■ **Par. 2.** Section 54.9831–1 is amended by revising paragraphs (c)(3)(i) and (c)(3)(ii), and adding paragraph (c)(3)(vi), to read as follows:

§ 54.9831–1 Special rules relating to group health plans.

* * * * *

(c) * * *

(3) * * *

(i) *In general.* Limited-scope dental benefits, limited-scope vision benefits, or long-term care benefits are excepted if they are provided under a separate policy, certificate, or contract of insurance, or are otherwise not an integral part of a group health plan as described in paragraph (c)(3)(ii) of this section. In addition, benefits provided under a health flexible spending arrangement are excepted benefits if they satisfy the requirements of paragraph (c)(3)(v) of this section. Furthermore, benefits provided under an employee assistance program are excepted benefits if they satisfy the requirements of paragraph (c)(3)(vi) of this section.

(ii) *Not an integral part of a group health plan.* For purposes of this

paragraph (c)(3), benefits are not an integral part of a group health plan (whether the benefits are provided through the same plan, a separate plan, or as the only plan offered to participants) if either paragraph (c)(3)(ii)(A) or (B) are satisfied.

(A) Participants may decline coverage. For example, a participant may decline coverage if the participant can opt out of the coverage upon request, whether or not there is a participant contribution required for the coverage.

(B) Claims for the benefits are administered under a contract separate from claims administration for any other benefits under the plan.

* * * * *

(vi) *Employee assistance programs.* Benefits provided under employee assistance programs are excepted if they satisfy all of the requirements of this paragraph (c)(3)(vi).

(A) The program does not provide significant benefits in the nature of medical care. For this purpose, the amount, scope and duration of covered services are taken into account.

(B) The benefits under the employee assistance program are not coordinated with benefits under another group health plan, as follows:

(*1*) Participants in the other group health plan must not be required to use and exhaust benefits under the employee assistance program (making the employee assistance program a gatekeeper) before an individual is eligible for benefits under the other group health plan; and

(*2*) Participant eligibility for benefits under the employee assistance program must not be dependent on participation in another group health plan.

(C) No employee premiums or contributions are required as a condition of participation in the employee assistance program.

(D) There is no cost sharing under the employee assistance program.

* * * * *

DEPARTMENT OF LABOR

Employee Benefits Security Administration

For the reasons stated in the preamble, the Department of Labor amends 29 CFR part 2590 as follows:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 3. The authority citation for part 2590 is revised to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 12(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–52, 124 Stat. 1029; Secretary of Labor's Order 1–2011, 77 FR 1088 (January 9, 2012).

■ 4. Section 2590.732 is amended by revising paragraphs (c)(3)(i) and (c)(3)(ii), and adding paragraph (c)(3)(vi), to read as follows:

§ 2590.732 Special rules relating to group health plans.

* * * * *

(c) * * *

(3) * * *

(i) *In general.* Limited-scope dental benefits, limited-scope vision benefits, or long-term care benefits are excepted if they are provided under a separate policy, certificate, or contract of insurance, or are otherwise not an integral part of a group health plan as described in paragraph (c)(3)(ii) of this section. In addition, benefits provided under a health flexible spending arrangement are excepted benefits if they satisfy the requirements of paragraph (c)(3)(v) of this section. Furthermore, benefits provided under an employee assistance program are excepted benefits if they satisfy the requirements of paragraph (c)(3)(vi) of this section.

(ii) *Not an integral part of a group health plan.* For purposes of this paragraph (c)(3), benefits are not an integral part of a group health plan (whether the benefits are provided through the same plan, a separate plan, or as the only plan offered to participants) if either paragraph (c)(3)(ii)(A) or (B) are satisfied.

(A) Participants may decline coverage. For example, a participant may decline coverage if the participant can opt out of the coverage upon request, whether or not there is a participant contribution required for the coverage.

(B) Claims for the benefits are administered under a contract separate from claims administration for any other benefits under the plan.

* * * * *

(vi) *Employee assistance programs.* Benefits provided under employee assistance programs are excepted if they satisfy all of the requirements of this paragraph (c)(3)(vi).

(A) The program does not provide significant benefits in the nature of medical care. For this purpose, the amount, scope and duration of covered services are taken into account.

(B) The benefits under the employee assistance program are not coordinated with benefits under another group health plan, as follows:

(*1*) Participants in the other group health plan must not be required to use and exhaust benefits under the employee assistance program (making the employee assistance program a gatekeeper) before an individual is eligible for benefits under the other group health plan; and

(*2*) Participant eligibility for benefits under the employee assistance program must not be dependent on participation in another group health plan.

(C) No employee premiums or contributions are required as a condition of participation in the employee assistance program.

(D) There is no cost sharing under the employee assistance program.

* * * * *

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Subtitle A

For the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR part 146 as set forth below:

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

■ 5. The authority citation for part 146 continues to read as follows:

Authority: Secs. 2702 through 2705, 2711 through 2723, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg–1 through 300gg–5, 300gg–11 through 300gg–23, 300gg–91, and 300gg–92).

■ 6. Section 146.145 is amended by revising paragraphs (b)(3)(i) and (b)(3)(ii), and adding paragraph (b)(3)(vi), to read as follows:

§ 146.145 Special rules relating to group health plans.

* * * * *

(b) * * *

(3) * * *

(i) *In general.* Limited-scope dental benefits, limited-scope vision benefits, or long-term care benefits are excepted if they are provided under a separate policy, certificate, or contract of insurance, or are otherwise not an integral part of a group health plan as described in paragraph (b)(3)(ii) of this section. In addition, benefits provided under a health flexible spending arrangement are excepted benefits if they satisfy the requirements of paragraph (b)(3)(v) of this section. Furthermore, benefits provided under an employee assistance program are excepted benefits if they satisfy the requirements of paragraph (b)(3)(vi) of this section.

(ii) *Not an integral part of a group health plan.* For purposes of this

paragraph (b)(3), benefits are not an integral part of a group health plan (whether the benefits are provided through the same plan, a separate plan, or as the only plan offered to participants) if either paragraph (b)(3)(ii)(A) or (B) are satisfied.

(A) Participants may decline coverage. For example, a participant may decline coverage if the participant can opt out of the coverage upon request, whether or not there is a participant contribution required for the coverage.

(B) Claims for the benefits are administered under a contract separate from claims administration for any other benefits under the plan.

* * * * *

(vi) *Employee assistance programs.* Benefits provided under employee assistance programs are excepted if they satisfy all of the requirements of this paragraph (b)(3)(vi).

(A) The program does not provide significant benefits in the nature of medical care. For this purpose, the amount, scope and duration of covered services are taken into account.

(B) The benefits under the employee assistance program are not coordinated with benefits under another group health plan, as follows:

(*1*) Participants in the other group health plan must not be required to use and exhaust benefits under the employee assistance program (making the employee assistance program a gatekeeper) before an individual is eligible for benefits under the other group health plan; and

(*2*) Participant eligibility for benefits under the employee assistance program must not be dependent on participation in another group health plan.

(C) No employee premiums or contributions are required as a condition of participation in the employee assistance program.

(D) There is no cost sharing under the employee assistance program.

* * * * *

[FR Doc. 2014–23323 Filed 9–26–14; 4:15 pm]

BILLING CODE 4150–28–P; 4830–01–P; 4510–29–P]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 147 and 155

[CMS–9949–F2]

RIN 0938–AS02

Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond; Correcting Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correcting amendment.

SUMMARY: In the May 27, 2014 issue of the **Federal Register** (79 FR 30240), we published a final rule which addressed various requirements applicable to health insurance issuers, Affordable Insurance Exchanges (''Exchanges''), Navigators, non-Navigator assistance personnel, and other entities under the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (collectively referred to as the Affordable Care Act). The effective date of the rule was July 28, 2014, except for amendments to 45 CFR 155.705, which were effective May 27, 2014. This correcting amendment corrects a limited number of technical and typographical errors identified in the ''Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond'' final rule.

DATES: *Effective Date:* This correcting amendment is effective on October 1, 2014.

FOR FURTHER INFORMATION CONTACT: Jacob Ackerman, (301) 492–4179.

SUPPLEMENTARY INFORMATION:

I. Background

The Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond final rule (the ''Final Rule''), which appeared in the May 27, 2014 **Federal Register** (79 FR 30240), contained a number of technical and typographical errors. Therefore, on July 24, 2014, we published a correction notice in the **Federal Register** (79 FR 42984), to correct some of those errors. The provisions of the correction notice were effective as if they had been included in the May 27, 2014 final rule. Accordingly, those corrections were effective July 28, 2014.

We have identified additional technical and typographical errors that appeared in the May 27, 2014 **Federal Register**. Therefore, we are publishing an additional correcting document to correct these errors. The provisions of this correcting document are effective October 1, 2014.

II. Summary of Errors in the Regulations Text

On page 30339, we amended the structure of § 147.104(b)(1)(i), removed duplicate regulatory text regarding the Small Business Health Options Program (SHOP), and made other minor revisions. However, when amending paragraph (b)(1)(i)(B) to remove duplicate regulatory text, we inadvertently cross referenced the incorrect regulatory section. The regulation should have referenced the SHOP group participation rules at § 156.285(e), not § 156.1250(c). We are correcting this error in this correcting document.

On page 30348, at § 155.420, we added a new paragraph (b)(2)(iv) to establish coverage effective dates for plan selections made during a special enrollment period, clarifying a consumer's ability to select a plan 60 days before and after a loss of coverage. However, we inadvertently omitted the amendatory instruction in the regulations text for adding this paragraph. As a result, this paragraph was published in the May 27, 2014 **Federal Register** but was not codified in the Code of Federal Regulations. We also published a subsequent correction notice amending language to this paragraph on July 24, 2014 (79 FR 42984). However, because the original text had not been codified, the change to this paragraph could not be codified. We are correcting this oversight. Specifically, we are adding a new (b)(2)(iv), which reflects the original language we intended to codify in the **Federal Register** as would have been modified by the July 24, 2014 correction notice.

On page 30350, at § 155.705(b)(3), we describe options with respect to employee choice requirements in the Small Business Health Options Program (SHOP). We are removing the comma after the word ''may'' in § 155.705(b)(3)(vi) to read, ''For plan years beginning in 2015 only, the SHOP may elect. . . .'' This was a typographical error that should be made for grammatical correctness.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect, in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), and section

553(d) of the APA ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication in the **Federal Register**. These requirements may be waived if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

This correcting document merely corrects technical and typographical errors in the ''Exchange and Insurance Market Standards for 2015 and Beyond'' final rule that was published on May 27, 2014 and which became effective on July 28, 2014, except for amendments to 45 CFR 155.705, which became effective on May 27, 2014. The changes are not substantive. Therefore, we believe that undertaking further notice and comment procedures to incorporate these corrections and delaying the effective date of these changes is unnecessary. In addition, we believe it is important for the public to have the correct information as soon as possible, and believe it is contrary to the public interest to delay the dissemination of it. For the reasons stated above, we find there is good cause to waive notice and comment procedures and the 30-day delay in the effective date for this correcting amendment.

List of Subjects

45 CFR Part 147

Health care, Health insurance, Reporting and recordkeeping requirements, State regulation of health insurance.

45 CFR Part 155

Administrative practice and procedure, Health care access, Health insurance, Reporting and recordkeeping requirements, State and local governments, Cost-sharing reductions, Advance payments of premium tax credit, Administration and calculation of advance payments of the premium tax credit, Plan variations, Actuarial value.

IV. Corrections of Errors in the Regulations Text

For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR parts 147 and 155 as set forth below:

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 1. The authority citation for part 147 continues to read as follows:

Authority: Secs 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 USC 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

§ 147.104 [Amended]

■ 2. In § 147.104(b)(1)(i)(B), the cross reference ''§ 156.1250(c)'' is removed and ''§ 156.285(e)'' is added in its place.

PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

■ 3. The authority citation for part 155 continues to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301, 1302, 1303, 1304, 1311, 1312, 1313, 1321, 1322, 1331, 1332, 1334, 1402, 1411, 1412, 1413, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, and 18081–18083).

■ 4. Section 155.420 is amended by adding paragraph (b)(2)(iv) to read as follows:

§ 155.420 Special enrollment periods.

* * * * *

(b) * * *

(2) * * *

(iv) In a case where a consumer loses coverage as described in paragraph (d)(1) or (d)(6)(iii) of this section, if the plan selection is made before or on the day of the loss of coverage, the Exchange must ensure that the coverage effective date is on the first day of the month following the loss of coverage. If the plan selection is made after the loss of coverage, the Exchange must ensure that coverage is effective in accordance with paragraph (b)(1) of this section or on the first day of the month following plan selection, at the option of the Exchange;

* * * * *

§ 155.705 [Amended]

■ 5. Section 155.705 is amended by removing the comma after the word ''may'' in paragraph (b)(3)(vi).

C'Reda Weeden,

Executive Secretary to the Department, Department of Health and Human Services.

FR Doc. 2014–23381 Filed 9–30–14; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[GN Docket No. 13–185; FCC 14–31]

Commercial Operations in the 1695–1710 MHz, 1755–1780 MHz, and 2155–2180 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: The Federal Communications Commission published a rule document in the **Federal Register** on June 4, 2014, revising Commission rules. That document inadvertently removed certain paragraphs. This document corrects the final regulations by restoring the paragraphs.

DATES: October 1, 2014.

FOR FURTHER INFORMATION CONTACT: Peter Daronco, Broadband Division, Wireless Telecommunications Bureau, at (202) 418–7235 or *Peter.Daronco@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a rule document in the **Federal Register** on June 4, 2014, (79 FR 32366), FCC 14–31, which inadvertently removed § 27.50(d)(5) through (10). This document corrects the final regulations by restoring paragraphs (d)(5) through (10) to § 27.50.

List of Subjects in 47 CFR Part 27

Communications common carriers, Radio.

Accordingly, 47 CFR part 27 is amended by making the following correcting amendment:

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 1. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, and 1451 unless otherwise noted.

■ 2. Section 27.50 is amended by adding paragraphs (d)(5) through (10) to read as follows:

§ 27.50 Power limits and duty cycle.

* * * * *

(d) * * *

(5) Equipment employed must be authorized in accordance with the provisions of § 24.51. Power measurements for transmissions by stations authorized under this section may be made either in accordance with a Commission-approved average power

technique or in compliance with paragraph (d)(6) of this section. In measuring transmissions in this band using an average power technique, the peak-to-average ratio (PAR) of the transmission may not exceed 13 dB.

(6) Peak transmit power must be measured over any interval of continuous transmission using instrumentation calibrated in terms of an rms-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, sensitivity, etc., so as to obtain a true peak measurement for the emission in question over the full bandwidth of the channel.

(7) Fixed, mobile, and portable (hand-held) stations operating in the 2000–2020 MHz band are limited to 2 watts EIRP, except that the total power of any portion of an emission that falls within the 2000–2005 MHz band may not exceed 5 milliwatts. A licensee of AWS–4 authority may enter into private operator-to-operator agreements with all 1995–2000 MHz licensees to operate in 2000–2005 MHz at power levels above 5 milliwatts EIRP; except the total power of the AWS–4 mobile emissions may not exceed 2 watts EIRP.

(8) A licensee operating a base or fixed station in the 2180–2200 MHz band utilizing a power greater than 1640 watts EIRP and greater than 1640 watts/MHz EIRP must be coordinated in advance with all AWS licensees authorized to operate on adjacent frequency blocks in the 2180–2200 MHz band.

(9) Fixed, mobile and portable (hand-held) stations operating in the 1915–1920 MHz band are limited to 300 milliwatts EIRP.

(10) A licensee operating a base or fixed station in the 1995–2000 MHz band utilizing a power greater than 1640 watts EIRP and greater than 1640 watts/MHz EIRP must be coordinated in advance with all PCS G Block licensees authorized to operate on adjacent frequency blocks in the 1990–1995 MHz band within 120 kilometers of the base or fixed station operating in this band.

* * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–23477 Filed 9–30–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 391

Driver Qualifications; Regulatory Guidance Concerning the Applicability of Language Requirement to Drivers Who Do Not Meet the Hearing Standard

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice of regulatory guidance.

SUMMARY: The FMCSA provides regulatory guidance concerning the applicability of the driver qualification requirement that interstate drivers must be able to read and speak the English language sufficiently to converse with the general public and respond to official inquiries to drivers who do not meet the Agency's hearing standard. The guidance explains that the English-language rule should not be construed to prohibit operation of a commercial motor vehicle (CMV) by hearing impaired drivers who can read and write in the English language but do not speak, for whatever reason. While the Federal Motor Carrier Safety Regulations (FMCSRs) prohibit individuals who do not meet the hearing standard from operating CMVs in interstate commerce, FMCSA has granted exemptions to a number of hearing-impaired individuals. Some hearing impaired drivers have advised the National Association of the Deaf that they have been told by State licensing agency officials that they do not meet the English language requirement essentially because they do not speak. This guidance is intended to address the perceived conflict between the exemptions and the manner in which FMCSA regulations are being applied to hearing impaired drivers.

DATES: This guidance is effective October 1, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations; 1200 New Jersey Ave. SE., Washington, DC 20590, Telephone 202–366–4325, Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Legal Basis

The Secretary of Transportation has statutory authority to set minimum standards for commercial motor vehicle safety. These minimum standards must ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators; and (5) an operator of a CMV is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation. (49 U.S.C. 31136(a)(1)–(5), as amended). The Secretary also has broad power in carrying out motor carrier safety statutes and regulations to ''prescribe recordkeeping and reporting requirements'' and to ''perform other acts the Secretary considers appropriate.'' (49 U.S.C. 31133(a)(8) and (10)).

The Administrator of FMCSA has been delegated authority under 49 CFR 1.87(f) to carry out the functions vested in the Secretary of Transportation by 49 U.S.C. chapter 311, subchapters I and III, relating to commercial motor vehicle programs and safety regulation.

Background

History of the English Language Requirement

On December 23, 1936, as part of its newly-promulgated ''Motor Carrier Safety Regulations,'' the Interstate Commerce Commission (ICC) established an English language requirement for drivers of motor vehicles operated in interstate or foreign commerce by common and contract carriers. The original wording, as contained in paragraph 3 of Part I [Qualification of Drivers] required that:

> On and after July 1, 1937, no motor carrier shall drive, or require or permit any person to drive, any motor vehicle operated in interstate or foreign commerce, unless the person so driving possesses the following minimum qualifications: * * * (k) Ability to read and speak the English language, unless the person was engaged in so driving on July 1, 1937 or within one year prior thereto, but in any case ability to understand traffic and warning signs. (1 M.C.C. 1, at 18–19)

The preamble to the I.C.C decision stated that:

> It is evident that ability to read and speak English is important to any adequate compliance with safety regulations. Cognizance has been taken, however, of the existence in certain areas of numbers of drivers in present service who are unable to read or speak English, but even in these cases the ability at least to understand traffic and warning signs is required. (1 M.C.C. 1, at 7–8)

On May 27, 1939, the ICC made certain changes and additions to the Motor Carrier Safety Regulations,

including elimination of the exceptions granted by the original rules for those drivers unable to read and speak English. As stated in that notice,

> ''The intent of the Commission to require such ability of all drivers in this service has been unmistakable since 1937, and the intervening period of more than two years is regarded as sufficient to justify the removal of the exception.'' (14 M.C.C. 669, at 675)

Section 391.11(b)(2) of the Federal Motor Carrier Safety Regulations (FMCSRs) currently states that a person is qualified to drive a commercial motor vehicle if he/she ''can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.''

Relationship Between the English Language Rule and the Hearing Standard

Currently, FMCSA's physical qualifications standards under 49 CFR 391.41(b)(11) require that drivers be capable of hearing a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid.

Section 391.41(b)(11) Exemptions

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the safety regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period.

On February 1, 2013, FMCSA announced its decision to grant requests from 40 individuals for exemptions from the Agency's physical qualifications standard concerning hearing for interstate drivers (78 FR 7479). After notice and opportunity for public comment, the Agency concluded that granting exemptions for these CMV drivers will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions. As part of the process for reaching this decision, the Agency considered the medical status of each applicant and evaluated their crash and violation data; some of the applicants were driving CMVs in intrastate commerce. The Commercial Driver's License Information System and Motor Carrier Management Information System were searched for crash and violation data on the applicants and each of them demonstrated a safe driving history. The FMCSA granted exemptions that allow these 40 individuals to operate CMVs in interstate commerce for a 2-year period. Subsequently, FMCSA granted an additional 20 exemptions and requested public comment on more than 70 applications for exemptions from the hearing standard. The exemptions preempt State laws and regulations and may be renewed by FMCSA.

Following the decision to grant exemptions, because some hearing-impaired drivers granted exemptions do not speak English, it has been asserted that they may not meet the requirements of § 391.11(b)(2) and may not be qualified to operate CMVs in interstate commerce, even though they can read and write in English. This issue was first raised by the National Association of the Deaf in discussions with the Agency prior to the granting of the exemptions and continues to be an issue in need of clarification.

FMCSA's Decision To Issue Regulatory Guidance

In consideration of the above, FMCSA has determined that regulatory guidance should be issued to make clear that, for drivers exempted from the hearing standard in 49 CFR 391.41(b)(11) who cannot speak English, the ability to read and write in English is sufficient to satisfy the English-language requirement of 49 CFR 391.11(b)(2). The FMCSA adds Question 7 to its guidance for 49 CFR 391.11, to read as follows:

Qualification and Disqualification of Drivers; Regulatory Guidance for 49 CFR 391.11(b)(2)

Question 7: Would a driver who fails to meet the hearing standard under 49 CFR 391.41(b)(11) but has obtained an exemption from that requirement, be considered unqualified under the English language proficiency requirement in 49 CFR 391.11(b)(2) if the driver cannot communicate orally in English?

Guidance: No, if the hearing impaired driver with an exemption is capable of reading and writing in the English language. In that circumstance, the hearing impaired driver satisfies the English language requirement. The absence of an ability to speak in English is not an indication that the individual cannot read and write in English sufficiently to communicate with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.

Issued on: September 25, 2014.

T. F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2014–23435 Filed 9–30–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2014–0042; 4500030113]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Rio Grande Cutthroat Trout as an Endangered or Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Rio Grande cutthroat trout (*Oncorhynchus clarkii virginalis*) as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After review of the best available scientific and commercial information, we find that listing the Rio Grande cutthroat trout is not warranted at this time, and, therefore, we are removing this species from our candidate list. However, we ask the public to submit to us any new information that becomes available concerning the status of the Rio Grande cutthroat trout at any time.

DATES: The finding announced in this document was made on October 1, 2014.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2014–0042. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Rd NE., Albuquerque, NM 87113. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Wally ''J'' Murphy, Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES**); telephone 505–346–2525; or facsimile 505–346–2542. If

you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

On February 25, 1998, we received a petition from the Southwest Center for Biological Diversity requesting that the Rio Grande cutthroat trout be listed as an endangered or threatened species. We subsequently published a notice of a 90-day petition finding in the **Federal Register** (63 FR 49062) on September 14, 1998, concluding that the petition did not present substantial information indicating that listing of the Rio Grande cutthroat trout may be warranted.

On June 9, 1999, the Southwest Center for Biological Diversity sued the Service in regard to our September 14, 1998, 90-day petition finding. While this litigation was pending, we received information (particularly related to the presence of whirling disease in hatchery fish in the wild) that led us to believe that further review of the status of the subspecies was warranted. On November 8, 2001, the Service and the Southwest Center for Biological Diversity entered into a settlement agreement stipulating that the Service would initiate a status review for the Rio Grande cutthroat trout; make a determination on or before June 3, 2002; and shortly thereafter, publish our determination in the **Federal Register**. On June 11, 2002, after reviewing the best available scientific and commercial data, including data related to the presence of whirling disease, we published a determination that listing of Rio Grande cutthroat trout was not warranted (67 FR 39936).

Subsequently, on February 25, 2003, the Center for Biological Diversity (formerly Southwest Center for Biological Diversity), along with several other organizations, sued the Service for the 2002 decision that the subspecies did not warrant listing under the Act. On June 7, 2005, the district court ruled that our finding was not arbitrary and capricious, but also required that we explain in more detail our analysis of ''significant portion of the range.'' The court ordered the Service to provide supplemental briefing discussing in more detail our analysis of ''significant portion of the range.'' Following submission of this briefing, on December 22, 2005, the Court ruled in favor of the Service and upheld our interpretation of ''significant portion of the range'' and determined that our evaluation of the Rio Grande cutthroat trout's status under the listing criteria was not arbitrary and capricious. Plaintiffs appealed this decision.

The appeal was pending with the Tenth Circuit Court of Appeals, when other courts issued opinions in regard to decisions for other species that required the Service to reexamine our legal position on ''significant portion of the range.'' On March 16, 2007, the Solicitor of the Department of the Interior issued a formal legal opinion titled ''The Meaning of In Danger of Extinction Throughout All or a Significant Portion of Its Range'' (M–37013, U.S. DOI 2007). Because of this new formal legal opinion and because of our knowledge of changes in status of some populations that we had previously defined as secure in our 2002 review, the Service initiated a new status review. We subsequently published notices seeking new information concerning the status of Rio Grande cutthroat trout on May 22, 2007 (72 FR 28664) and August 16, 2007 (72 FR 46030). On May 14, 2008 (73 FR 27900), we found that the Rio Grande cutthroat trout warranted listing as an endangered or threatened species under the Act based on threats to the subspecies related to population fragmentation and isolation, small population size, nonnative trout, drought, and fire. However, the Service determined that developing a proposed rule to list the Rio Grande cutthroat trout as endangered or threatened at that time was precluded by other, higher priority listing actions. The subspecies became a candidate for listing at that time.

On September 9, 2011, the Service entered into a settlement agreement regarding species on the candidate list in multi-district litigation (MDL settlement agreement; Endangered Species Act Section 4 Deadline Litigation, No. 10–377 (EGS), MDL Docket No. 2165 (D.D.C. May 10, 2011)). Per the MDL settlement agreement, the Service is required to submit a proposed rule or a not warranted 12-month finding to the **Federal Register** for Rio Grande cutthroat trout in Fiscal Year 2014, which ends September 30, 2014. This 12-month finding fulfills that requirement of the MDL settlement agreement.

Summary of Biological Status

We completed the Species Status Assessment Report for the Rio Grande Cutthroat Trout (SSA Report; Service 2014a, entire), which is available online at *http://www.regulations.gov,* Docket No. FWS–R2–ES–2014–0042. The SSA Report documents the results of the comprehensive biological status review for the Rio Grande cutthroat trout (*Oncorhynchus clarkii virginalis*) and provides an account of the subspecies' overall viability and thus extinction risk through a forecasting of the number and distribution of surving populations in the future (Service 2014a, entire). In the SSA Report we summarized the relevant biological data and a description of past, present, and likely future risk factors (causes and effects) and conducted a new analysis of the viability of the subspecies. The SSA Report provides the scientific basis that informs our regulatory decision regarding whether this subspecies should be listed as endangered or threatened under the Act. This decision involves the application of standards within the Act, its implementing regulations, and Service policies (see Finding). The SSA Report contains the risk analysis on which this finding is based, and the following discussion is a summary of the results and conclusions from the SSA Report.

Rio Grande cutthroat trout (a subspecies of cutthroat trout) inhabit high-elevation streams in New Mexico and southern Colorado, where they need clear, cold, highly oxygenated water; clean gravel substrates; a network of pools and runs; and an abundance of food (typically aquatic and terrestrial invertebrates) to complete their life history. The subspecies needs multiple resilient populations widely distributed across its range to maintain its persistence into the future and to avoid extinction. Resilient populations require long, continuous, suitable stream

habitats to support large numbers of individuals and to withstand stochastic events; the populations should be free from the impacts of nonnative trout. The resilient populations (the term resiliency is defined below) should be distributed in each of the four geographic management units (GMUs) where the subspecies currently occurs. This distributional pattern will provide redundancy and representation (these terms are defined below) to increase the probability that the subspecies will withstand future catastrophic events and maintain future adaptive capacity in terms of genetic and ecological diversity (Service 2014a, Table ES–1). The likelihood of the Rio Grande cutthroat trout's persistence depends upon the number of populations, its resilience to threats, and its distribution. As we consider the future viability of the subspecies, more populations with greater resiliency and wider geographic distributions are associated with higher overall subspecies viability.

The Rio Grande cutthroat trout historically occurred in New Mexico and southern Colorado. Its distribution has been divided into five GMUs reflecting major hydrologic divisions. The subspecies no longer occurs in one GMU, the Caballo GMU, where only one population was historically known. The remaining four GMUs are managed by the States of Colorado and New Mexico and other agencies as separate units to maintain genetic and ecological diversity within the subspecies where it exists and to ensure representation of the subspecies across its historical range. GMUs were not created to necessarily reflect important differences in genetic variability, although fish in the Pecos and Canadian GMUs do exhibit some genetic differentiation from those in the Rio Grande basin GMUs. From a rangewide perspective, multiple Rio Grande cutthroat trout populations should be dispersed throughout the various GMUs to maintain subspecies viability and to reduce the likelihood of extinction.

Currently the subspecies is distributed in 122 populations across the four GMUs (ranging from 10 to 59 populations per GMU), and most of the populations are isolated from other populations. The total amount of currently occupied stream habitat is estimated to be about 11 percent of the historically occupied range. This large decline in distribution and abundance is primarily due to the impacts of the introduction of nonnative trout. Nonnative rainbow trout (*O. mykiss*) and other nonnative subspecies of cutthroat trout invaded most of the historical range of the Rio Grande cutthroat trout and resulted in their extirpation because the nonnative trout readily hybridize with Rio Grande cutthroat trout. In addition, brown trout (*Salmo trutta*) and brook trout (*Salvelinus fontinalis*) have also displaced Rio Grande cutthroat trout in some historical habitats through competition and predation pressures. We evaluated the current condition of the 122 populations and categorized the condition of each population based on the absence of nonnative trout, the effective population size, and the occupied stream length. Fifty-five populations were in either the ''best'' or ''good'' condition in this categorization. Table ES–2 in the SSA Report identifies the number of populations placed in each category by GMU (see Service 2014a, Chapter 3 for a description of the categories).

We next reviewed the past, current, and future factors that could affect the persistence of Rio Grande cutthroat trout populations. Seven risk factors were evaluated in detail to estimate their individual and cumulative contributions to the overall risk to the subspecies' viability. We focused on these seven factors because they were found to potentially have population-level effects on the subspecies (Service 2014a, Chapter 4, Appendix B, and Appendix C). The seven factors were:

(1) Demographic Risk: Small population sizes are at greater risk from inbreeding, demographic fluctuations, and reduced genetic diversity, and they are more vulnerable to extirpation from other risk factors.

(2) Hybridizing Nonnative Trout: Nonnative rainbow and other cutthroat trout subspecies have historically been introduced throughout the range of Rio Grande cutthroat trout for recreational angling, and they are known to readily hybridize with Rio Grande cutthroat trout. Climate change may exacerbate this risk factor as warmer waters may make high-elevation habitats more susceptible to invasion by rainbow trout.

(3) Competing Nonnative Trout: Brook and brown trout compete with Rio Grande cutthroat trout for food and space, and larger adults will prey upon young Rio Grande cutthroat trout.

(4) Wildfire: Ash and debris flows that occur after a wildfire can eliminate populations of fish from a stream, and wildfires within the range of Rio Grande cutthroat trout have depressed or eliminated fish populations. As drought frequency increases due to climate change, dry forests are more likely to burn and burn hotter than they have in the past.

(5) Stream Drying: Drying of streams occupied by Rio Grande cutthroat trout populations may occur as a result of drought or, in a few cases, water withdrawals. Drought frequency is expected to increase as a result of climate change due to a combination of increased summer temperatures and decreased precipitation.

(6) Disease: Whirling disease damages cartilage, killing young fish or causing infected fish to swim in an uncontrolled whirling motion, making it impossible to avoid predation or feed.

(7) Water Temperature Changes: Changes in air temperature and precipitation patterns expected from climate change could result in elevated stream temperatures that make habitat unsuitable for Rio Grande cutthroat trout to complete their life history.

We considered other potential factors as well, including hydrologic changes related to future climate change, effects to habitat related to land management, and angling. Our review of the best available information did not demonstrate a relationship between hydrologic changes and the potential negative effects on the subspecies to allow for reasonably reliable conclusions; therefore, we did not consider that factor further. We found that land management activities are not likely to have a measurable population-level effect on the subspecies, and angling was also not found to be a substantial factor affecting the subspecies. Therefore, these factors were not evaluated further in our analysis (Service 2014a, Chapter 4).

We included future management actions as an important part of our overall assessment. The Rio Grande Cutthroat Trout Conservation Team (Conservation Team) is composed of biologists from Colorado Parks and Wildlife (CPW), New Mexico Department of Game and Fish (NMDGF), U.S. Bureau of Land Management (BLM), U.S. Forest Service (USFS), National Park Service (NPS), Mescalero Apache Nation, Jicarilla Apache Nation, Taos Pueblo, and the Service. The Conservation Team developed the Conservation Agreement and Strategy in 2013 (revised from the previous Conservation Agreements in 2003 and 2009), which formalized many ongoing management actions. The Conservation Agreement and Strategy includes activities such as stream restorations, barrier construction and maintenance, nonnative species removals, habitat improvements, public outreach, and database management. Over the 10-year life of the Conservation Agreement and Strategy, the Conservation Team has committed to

restoration of between 11 and 20 new Rio Grande cutthroat trout populations to historical habitat. We included these activities in our analysis of the future status of the subspecies over the next 10 years (see *PECE Analysis,* below) and projected various scenarios of active management beyond that.

We developed a species status assessment model to quantitatively incorporate the risks of extirpation from the seven risk factors listed above (including cumulative effects) in order to estimate the future probability of persistence of each extant population of Rio Grande cutthroat trout. We used this model to forecast the future status of the Rio Grande cutthroat trout in a way that addresses viability in terms of the subspecies' resiliency, redundancy, and representation. As a result, we developed two distinct modules. Module 1 estimates the probability of persistence for each Rio Grande trout population by GMU for three future time periods (2023, 2040, and 2080) under a range of conditions, and Module 2 estimates the number of surviving populations by GMU for the three future time periods under several scenarios related to future management actions and the effects of climate change. A detailed explanation of the methodology used to develop the model is provided in Appendix C of the SSA Report (Service 2014a, Appendix C), and the results are summarized in Chapter 5 (Service 2014a, Chapter 5).

We used the results of this analysis to describe the viability of the Rio Grande cutthroat trout (viability is the ability of a species to persist over time and thus avoid extinction; ''persist'' means that the species is expected to sustain populations in the wild beyond the end of a specified time period) by characterizing the status of the subspecies in terms of its resiliency, redundancy, and representation.

Resiliency is having sufficiently large populations for the subspecies to withstand stochastic events. We measured resiliency at the population scale for the Rio Grande cutthroat trout by quantifying the persistence probability of each extant population under a range of assumed conditions. As expected because of the way the status assessment model was developed to forecast linearly increasing risks over time, all of the population persistence probabilities decrease in our three time periods. Our results do not necessarily mean that any one population will, in fact, be extirpated by 2080; they simply reflect the risks that we believe the populations face due to their current conditions and the risk factors influencing their resiliency.

Rangewide, the resiliency of the subspecies has declined substantially due to the large decrease in overall distribution in the last 50 years. In addition, the remnant Rio Grande cutthroat trout populations are now mostly isolated to headwater streams due to the fragmentation that has resulted from the historical, widespread introduction of nonnative trout across the range of Rio Grande cutthroat trout. Therefore, if an extant population is extirpated due to a localized event, such as a wildfire and subsequent debris flow, there is little to no opportunity for natural recolonization of that population. This reduction in resiliency results in a lower probability of persistence for the subspecies as a whole. To describe the remaining resiliency of the subspecies, we evaluated the individual populations in detail to understand the subspecies' overall capacity to withstand stochastic events.

Redundancy is having a sufficient number of populations for the subspecies to withstand catastrophic events. For the Rio Grande cutthroat trout, we measured redundancy based our forecasting of the number of populations persisting across the subspecies' range. The results suggest that, depending on the particular scenario related to risk factors and restoration efforts, the overall number of populations may decline to some extent by 2080 (Service 2014a, Table ES–1, Column 4). We are focusing on the estimates for 2080, because if the subspecies has sufficient redundancy by 2080, it will also have sufficient redundancy in the more recent time periods. Rangewide there are currently 122 populations, and we forecast between 50 and 132 populations surviving in 2080 (with an intermediate forecast of 68 populations). The wide range in the estimated number of surviving populations is due to the various projections of management and climate change intensity. Some GMUs may decline more than others; for example, our forecasts suggest the Lower Rio Grande GMU may have the largest decline. We estimate the current 59 populations in this GMU could be between 21 and 47 populations by 2080 (with an intermediate forecast of 28 populations). The GMU with the least populations, the Canadian GMU, is forecasted to change from 10 current populations to between 3 and 14 populations by 2080 (with an intermediate forecast of 6 populations).

Representation is having the breadth of genetic and ecological diversity of the subspecies to adapt to changing environmental conditions. For the Rio Grande cutthroat trout, we evaluated representation based on the extent of the geographical range expected to be maintained in the future as indicated by the populations occurring within each GMU for a measure of ecological diversity. For genetic diversity, there are important genetic differences between the Rio Grande basin populations and the populations in the Canadian and Pecos GMUs (though the Pecos and Canadian GMUs are not genetically different from each other). The variation in persistence probabilities is distributed across the GMU so that none of the risk is particularly associated with any particular geographic area within the GMU. Combined, the Canadian and Pecos GMUs are forecasted to have 8 to 30 populations surviving in 2080 (with an intermediate forecast of 14 populations).

We used the best available information to forecast the likely future condition of the Rio Grande cutthroat trout. Our goal was to describe the viability of the subspecies quantitatively in a way that characterizes the needs of the subspecies in terms of resiliency, redundancy, and representation. We considered the possible future condition of the subspecies out to about 65 years from the present (see discussion regarding foreseeable future, below, in the *Threatened Species Throughout Range* section). We considered nine different scenarios that spanned a range of potential conditions that we believe are important influences on the status of the subspecies. Our results describe a range of possible conditions in terms of the probability of persistence of individual populations across the GMUs and a forecast of the number of populations surviving in each GMU.

Although we evaluated nine different scenarios in our assessment, for this finding we report the foreseeable worse case and best case results that show the full range of outcomes. In each of the relevant conclusions, we focus on the foreseeable worse case results. Logically, if the subspecies does not warrant listing under our worst-case scenario, the eight remaining scenarios will also not warrant listing the subspecies. We also provide in this finding the best case results of each scenario for each of the relevant conclusions. This provides a context for the range of possible outcomes for the future populations of the subspecies.

Considering the worst case scenario allowed us to view the viability of the subspecies under conditions of low management and severe climate change, which are aspects of the model with high uncertainty. None of our ''worst case scenario'' forecasts results in a

predicted loss of all of the populations within any of the GMUs. Therefore, at a minimum, our results suggest the subspecies will have persisting populations in 2080 across its range. Most of the scenarios generally show a declining number of populations over time. However, the rate of this decline, or whether it occurs at all, depends largely on the likelihood of future management actions occurring, the most important of which are the future restoration and reintroduction of populations within the historical range and the control of nonnative trout. While other factors are important to each population, the future management efforts will probably determine the future viability of the Rio Grande cutthroat trout. These conservation efforts were an important consideration in the SSA analysis.

PECE Analysis

The Service's 2003 Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) provides guidance on how to evaluate conservation efforts that have not yet been fully implemented or have not yet demonstrated effectiveness (68 FR 15100, March 28, 2003). The purpose of PECE is to ensure consistent and adequate evaluation of recently formalized conservation efforts when making listing decisions. The policy presents criteria for evaluating the certainty of implementation and the certainty of effectiveness for such conservation efforts. We evaluated two formalized conservation efforts and their specific conservation measures under PECE (see PECE Evaluation, Service 2014b, entire): the Conservation Agreement and Strategy and the Vermejo Park Ranch Candidate Conservation Agreement with Assurances (Vermejo CCAA). We found the specific conservation measures in each of the formalized conservation efforts to have high levels of certainty of implementation and effectiveness and both were considered as part of the basis for our listing determination for the Rio Grande cutthroat trout. Below is a brief summary of each effort, and more detail is provided in our separate PECE analysis (Service 2014b, entire).

Conservation Agreement and Strategy

The Conservation Agreement and Strategy for the Conservation of Rio Grande Cutthroat Trout was signed in 2013 by NMDGF, CPW, USFS, NPS, BLM, Mescalero Apache Nation, Jicarilla Apache Nation, Taos Pueblo, and the Service. The 2013 Conservation Agreement and Strategy was a revision to the Conservation Agreement that was originally signed in 2003. The measures in the Conservation Agreement and Strategy are made up of cooperative efforts by the parties to develop and implement the necessary conservation measures for the Rio Grande cutthroat trout to have sufficient resiliency, representation, and redundancy to provide for long-term viability. Conservation measures include:

(1) Identify and characterize all Rio Grande cutthroat trout conservation populations and occupied habitat. Characterization includes gathering data on Rio Grande cutthroat trout density, length of occupied habitat, genetic status, and habitat quality.

(2) Secure and enhance conservation populations.

(3) Restore populations.

(4) Secure and enhance watershed conditions.

(5) Public outreach.

(6) Data sharing.

(7) Coordination.

Throughout the 10-year life of the Conservation Agreement and Strategy, the parties have committed to restoring 11 to 20 new populations of Rio Grande cutthroat trout rangewide. In our PECE analysis, we found that the conservation efforts in the Rio Grande Cutthroat Trout Conservation Agreement and Strategy have a high level of certainty of implementation and effectiveness because of the demonstrated ability of the participants in carrying out an effective conservation program for this subspecies. Therefore, we considered these efforts as part of the basis for our listing determination for the Rio Grande cutthroat trout under the Act.

Vermejo CCAA

The goal of the Vermejo CCAA, signed in 2013, is to facilitate and promote the conservation and restoration of the Rio Grande cutthroat trout on certain non-Federal lands owned by Vermejo Park Ranch, LLC. Vermejo Park Ranch consists of 590,823 acres (2,391 square kilometers) in Costilla County, Colorado, and Taos County, New Mexico, managed for conservation, hunting, and fishing. Vermejo Park Ranch is implementing the conservation measures specified in the Vermejo CCAA and has received assurances from the Service that if the Rio Grande cutthroat trout is listed under the Act, no further conservation measures will be required. Conservation measures being implemented by Vermejo Park Ranch include nonnative trout removal, Rio Grande cutthroat trout reintroductions, and increasing existing populations so they are capable of migrating among tributaries. Overall, the project encompasses the restoration of approximately 190 kilometers (118 miles) of stream habitat, and to date nearly 100 kilometers (62 miles) of restoration have been completed and are being monitored. In our PECE analysis, we found that the conservation efforts in the Vermejo CCAA have a high level of certainty of implementation and effectiveness because of the demonstrated ability of the Vermejo Park Ranch for carrying out effective conservation actions for the subspecies. Therefore, we considered these conservation efforts as part of the basis for our listing determination for the Rio Grande cutthroat trout.

Finding

Standard for Review

Section 4 of the Act, and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(b)(1)(a), the Secretary is to make endangered or threatened determinations required by subsection 4(a)(1) solely on the basis of the best scientific and commercial data available to her after conducting a review of the status of the subspecies and after taking into account conservation efforts by States or foreign nations. The standards for determining whether a species is endangered or threatened are provided in section 3 of the Act. An endangered species is any species that is ''in danger of extinction throughout all or a significant portion of its range.'' A threatened species is any species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Per section 4(a)(1) of the Act, in reviewing the status of the species to determine if it meets the definition of endangered or of threatened, we determine whether any species is an endangered species or a threatened species because of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence.

Until recently the Service has presented its evaluation of information under the five listing factors in an outline format, discussing all of the information relevant to any given factor and providing a factor-specific conclusion before moving to the next factor. However, the Act does not

require findings under each of the factors, only an overall determination as to the species' status (for example, endangered species, threatened species, or not warranted). Ongoing efforts to improve the efficiency and efficacy of the Service's implementation of the Act have led us to present this information in a different format that we find leads to greater clarity in our understanding of the science, its uncertainties, and our application of our statutory framework to that science. Therefore, while the presentation of information in this document differs from past practice, it differs in format only. We have evaluated the same body of information that, in the past, we have discussed under an outline of the five listing factors. In this analysis, we are applying the same information standard, and we are applying the same statutory framework in reaching our conclusions and ultimate determination of the status of the subspecies under the Act.

Summary of Analysis

The biological information we reviewed and analyzed as the basis for our findings is documented in the Rio Grande Cutthroat Trout Species Status Assessment Report (Service 2014a, entire), a summary of which is provided in the background of this finding. The projections for the number of future persisting populations are based on the Species Status Assessment Model (SSA Model; Service 2014a, Chapter 5 and Appendix C), which incorporates the potential risk factors (in other words, threats) that were found to have possible population-level effects. The risk factors we evaluated in detail are demographic risk (Factor E from the Act), nonnative trout (Factors C and E), wildfire (Factor A), stream drying (Factor A), disease (Factor C), and water temperature changes (Factor A). For four of the factors (hybridizing nonnative trout, wildfire, stream drying, and water temperature changes), we also considered the exacerbating effects of climate change. We reviewed, but did not evaluate in further detail because of a lack of population-level effects, the effects of land management activities and hydrologic changes (Factor A), and recreational angling (Factor B).

The overall results of the status assessment found that the best available information indicates that large declines (approximately 89 percent loss) in the distribution and abundance of Rio Grande cutthroat trout have occurred in the past 50 years or so due mainly to the impacts from introduced nonnative trout. This declining trend has been abated in recent years to a large extent due to management efforts to control nonnative trout and limit new introductions and the spread of nonnative trout. However, the results of the past impacts have left the Rio Grande cutthroat trout in a remnant of its former habitat, which is now primarily high-elevation headwater streams. The purpose of the status assessment was to characterize the future viability of the subspecies in the face of this reduced distribution and the ongoing factors that put populations at risk of extirpation.

In the SSA Report, we described the viability of the Rio Grande cutthroat trout in terms of redundancy, representation, and resiliency (Service 2014a, Chapter 5). These characteristics have all been reduced in the subspecies because of the historical declines in its distribution and abundance. In addition, the reduction in population sizes and the isolated nature of most remaining populations makes many of the potential stressors to the Rio Grande cutthroat trout more significant than they would have been historically. This is because small populations are more susceptible to extirpation from negative events, whether those events are natural or human-caused. In addition, in the event of a local extirpation due to a negative stochastic event, isolated populations are unable to be recolonized by natural dispersal from nearby populations. Therefore, the Rio Grande cutthroat trout has an overall reduced viability compared to historical conditions.

Our forecasts take into consideration a range of the likely number of populations that could be restored in the future through work of the agencies under the multi-agency Conservation Agreement and Strategy. Numerous conservation efforts are ongoing for Rio Grande cutthroat trout. The conservation measures for the Conservation Agreement and Strategy and the Vermejo CCAA are evaluated in the PECE analysis (Service 2014b) discussed above. The formal agreements extend for 10 years, but in the case of the Conservation Agreement and Strategy, in particular, we expect efforts to continue further into the future. We cannot predict the number and type of efforts that will be performed in the future with as much accuracy as the Conservation Agreement and Strategy specifies for the next 10 years. However, given the history of the Conservation Team and the motivation of the States in the conservation of this subspecies (Service 2014b), we expect management efforts to continue past the life of the Conservation Agreement and Strategy, either formally (through renewal of the Conservation Agreement and Strategy) or informally. As such, we have included varying levels of conservation efforts in the different scenarios of our model forecasting.

Application of Analysis to Determinations

Our status assesment characterized Rio Grande cutthroat trout viability (future persistence) in terms of number and distribution of populations expected to persist through 2080. These outputs form the basis for our determinations under the Act. Because of uncertainty, mainly related to climate change and the level of future conservation efforts, our forecasts include a variety of scenarios. For these findings, we refer to our results under the best and worst case scenarios over two time horizons: 2023 and 2080. The fundamental question before the Service is whether the projections of extinction risk, described in terms of the number of future populations and their distribution (taking into account the risk factors and their effects on those populations), indicate that the subspecies warrants protection as endangered or threatened under the Act. The lower the number and smaller the distribution of the persisting populations, the higher the extinction risk and lower the overall viability. In making our determinations, we focused on the worst case scenario because, if the worst case scenario does not rise to a level for which the subspecies meets the definition of an endangered or a threatened species, then the more optimistic forecasts are considerably better and likewise would not warrant an endangered or threatened conclusion. We also included the best case scenario outcome in order to provide context of the likely range of the number of persisting populations of the subspecies.

As described in the determinations below, we first evaluated whether the Rio Grande cutthroat trout is in danger of extinction throughout its range now (an endangered species). We then evaluated whether the subspecies is likely to become in danger of extinction throughout its range in the foreseeable future (a threatened species). We considered future voluntary conservation efforts in the information used in these determinations, consistent with PECE. We finally considered whether the Rio Grande cutthroat trout is an endangered or threatened species in a significant portion of its range (SPR).

Endangered Species Throughout Range

Standard

Under the Act, an endangered species is any species that is ''in danger of extinction throughout all or a significant portion of its range.'' Because of the fact-specific nature of listing determinations, there is no single metric for determining if a species is currently in danger of extinction. We used the best available scientific and commercial information to evaluate the viability (and thus risk of extinction) for the Rio Grande cutthroat trout to determine if it meets the definition of an endangered species. In this finding, we used a projection of the number and distribution of populations to measure the Rio Grande cutthroat trout's viability and then determine the subspecies' status under the Act.

Evaluation and Finding

Our review found that there are currently 122 existing populations of the Rio Grande cutthroat trout in four GMUs. We consider each of these populations genetically pure enough to be Rio Grande cutthroat trout; that is, each population has 90 percent or more of the native Rio Grande cutthroat trout genes. To assess the current status of these populations, we sorted each of them into four categories to consider their current status, which was based on effective population size, occupied stream length, presence of competing nonnative trout, and presence of hybridizing nonnative trout. We categorized 55 of the populations (45 percent) as currently in the best or good condition of having no nonative trout, relatively large effective population sizes, and relatively long occupied stream lengths (Service 2014a, pp. 14–15). This current number of populations in the best or good condition existing across the subspecies' range provides resiliency (45 percent of populations considered sufficiently large to withstand stochastic events), redundancy (55 populations spread across all four extant GMUs to withstand catastrophic events), and representation (multiple populations are persisting across the range of the subspecies to maintain ecological and genetic diversity).

The Rio Grande cutthroat trout also historically occurred in a fifth GMU—the Caballo GMU. We only know of one historical population in this GMU, which was extirpated more than 30 years ago. With only one population, this area would not have significantly contributed to the resiliency and redundancy of the subspecies. However, it could have had some important genetic or ecological diversity that would have contributed to the adaptive capacity of the subspecies. Losing this population likely lowered the overall viability of the subspecies but would not be a substantial enough impact rangewide to meaningfully increase the overall risk of extinction of the Rio Grande cutthroat trout.

To further consider the status of the Rio Grande cutthroat trout, we analyzed the condition of the subspecies over the next 10 years to evaluate its viability. In 2023, we projected an estimated range of between 104 and 131 populations will persist under worst case and best case scenarios, respectively. According to our forecasts, these populations would be distributed throughout the subspecies' range, with multiple populations persisting in all four of the currently extant GMUs (see Service 2014a, pp. 44–45 for complete results). Therefore, because this worst case estimate of the number and distribution of populations provides resiliency, representation, and redundancy for the subspecies, we conclude the subspecies does not meet the definition of an endangered species under the Act. Although the subspecies has experienced substantial reduction from its historical distribution, the number of Rio Grande cutthroat trout populations currently persisting and expected to persist in the next 10 years across its range does not put the subspecies in danger of extinction.

Threatened Species Throughout Range

Having found that the Rio Grande cutthroat trout is not an endangered species throughout its range, we next evaluated whether the subspecies is a threatened species throughout its range.

Standard

Under the Act, a threatened species is any species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The foreseeable future refers to the extent to which the Secretary can reasonably rely on predictions about the future in making determinations about the future conservation status of the species (U.S. Department of Interior, Solicitor's Memorandum, M–37021, January 16, 2009). A key statutory difference between a threatened species and an endangered species is the timing of when a species may be in danger of extinction, either now (endangered species) or in the foreseeable future (threatened species).

Evaluation and Finding

In considering the foreseeable future, our analysis used two timeframes to forecast the status of the Rio Grande cutthroat trout as measured by the number of possible surviving populations based on the risk factors and conservation efforts the subspecies is facing. We forecasted out to the years 2040 (about 25 years from present) and 2080 (about 65 years from present). We based these timeframes on the outputs of downscaled climate forecasting models that often project climate scenarios to the year 2080. Since potential effects of climate change were important considerations in our status assessment, it was necessary to consider a long enough timeframe to adequately evaluate those potential effects. The 2080 timeframe represents about 13 to 21 Rio Grande cutthroat trout generations and is a reasonably long time to consider for potential future effects of stressors on populations of the subspecies. This timeframe also represents our outermost estimate for forecasting, where our confidence decreases in our ability to forecast future environmental conditions related to the risk factors evaluated and to the responses of Rio Grande cutthroat trout populations.

To assist us in evaluating the status of the subspecies in the foreseeable future, we considered the risk factors that we found to have potential population-level effects over time. These future risk levels were incorporated into our status assessment model to forecast the number of surviving populations into the foreseeable future. We increased the risk levels linearly over time to account for the cumulative increase in the risks of chance events occurring in the future. In addition, for four risk factors (hybridizing nonnative trout, wildlife, stream drying, and water temperature) we provided a further increase in risks over time to account for the potential effects of climate change. We used our best professional judgment to estimate the effects of increasing risks due to climate change. In addition, because of the high uncertainty associated with climate change we considered a ''moderate'' and a ''severe'' effect of climate change. For the moderate climate change effect, we increased the risk function over time by 5 percent for the 2040 forecast and 10 percent for the 2080 forecast. For the severe climate change effect, we increased the risk function over time by 20 percent for the 2040 forecast and 40 percent for the 2080 forecast, as explained in greater detail in our SSA Report. We also included management activities in our

analysis of the future status of the subspecies over the next 10 years (see *PECE Analysis,* above), and projected various scenarios of active management beyond that.

In 2080, our model forecasted 50 to 132 populations will persist rangewide under our worst and best case scenarios, respectively, with multiple populations in all four of the currently extant GMUs (Service 2014a, pp. 44–48). Therefore, because this worst-case forecast of the number and distribution of populations provides resiliency, redundancy, and representation for the subspecies, we conclude the subspecies is not likely to become in danger of extinction in the foreseeable future. Therefore, we find that the subspecies does not meet the definition of a threatened species under the Act.

Endangered or Threatened in a Significant Portion of the Range

Having found that the Rio Grande cutthroat trout is not an endangered or threatened species throughout its range, we next evaluated whether the subspecies warrants listing based on any significant portion of the subspecies' range.

Standard

Under the Act and our implementing regulations, a species may warrant listing if it is an endangered or a threatened species throughout all or a significant portion of its range. The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The term ''species'' includes ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' We published a final policy interpretating the phrase ''significant portion of its range'' (79 FR 37578, July 1, 2014). The final policy states that (1) if a species is found to be an endangered or a threatened species throughout a significant portion of its range, the entire species is listed as an endangered or a threatened species, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is ''significant'' if the species is not currently an endangered or a threatened species throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service or NMFS makes any particular status determination; and (4) if a vertebrate species is an endangered or a threatened species throughout an SPR, and the population in that significant portion is a valid distinct population segment (DPS), we will list the DPS rather than the entire taxonomic species or subspecies.

The SPR policy is applied to all status determinations, including analyses for the purposes of making listing, delisting, and reclassification determinations. The procedure for analyzing whether any portion is an SPR is similar, regardless of the type of status determination we are making. The first step in our analysis of the status of a species is to determine its status throughout all of its range. If we determine that the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range, we list the species as an endangered (or threatened) species and no SPR analysis will be required. If the species is neither an endangered nor a threatened species throughout all of its range, we determine whether the species is an endangered or a threatened species throughout a significant portion of its range. If it is, we list the species as an endangered or a threatened species, respectively; if it is not, we conclude that listing the species is not warranted.

When we conduct an SPR analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and either an endangered or a threatened species. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. Answering these questions in the affirmative is not a determination that the species is an endangered or a threatened species throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are affecting it uniformly throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats apply only to portions of the range that clearly do not meet the biologically based definition of ''significant'' (i.e., the loss of that portion clearly would not be expected to increase the vulnerability to extinction of the entire species), those portions will not warrant further consideration.

If we identify any portions that may be both (1) significant and (2) endangered or threatened, we engage in a more detailed analysis to determine whether these standards are indeed met. The identification of an SPR does not create a presumption, prejudgment, or other determination as to whether the species in that identified SPR is an endangered or a threatened species. We must go through a separate analysis to determine whether the species is an endangered or a threatened species in the SPR. To determine whether a species is an endangered or a threatened species throughout an SPR, we will use the same standards and methodology that we use to determine if a species is an endangered or a threatened species throughout its range.

Depending on the biology of the species, its range, and the threats it faces, it may be more efficient to address the ''significant'' question first, or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is an endangered or a threatened species there; if we determine that the species is not an endangered or a threatened species in a portion of its range, we do not need to determine if that portion is ''significant.''

Evaluation

Our SSA Report and supporting model (Service 2014a, Appendix C) evaluated population persistence (i.e., resiliency), incorporating the threats to the populations, within the four extant GMUs. Additionally, our description of the viability of the subspecies considered resiliency, representation, and redundancy in terms of the expected persistence of future populations at the GMU spatial scale. Therefore, our existing analysis quantitatively forecasts the future condition of Rio Grande cutthroat trout in a way that addresses viability in terms of the subspecies' resiliency, redundancy, and representation. Because the analysis was conducted by GMU, we are able to use the model's

output to analyze whether there is a significant portion of the range that is more vulnerable to extirpation than other parts of the range.

Therefore, the following evaluation first considers whether each of the four extant GMUs may be significant under our definition of SPR. In other words, we evaluated whether that GMU's contribution to the viability of the Rio Grande cutthroat trout is so important that, without the members in that GMU, the subspecies would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range. For the GMUs that we determined could meet this standard of significance, we then considered whether the forecasted future condition of that GMU, based on our species status assessment, would be an endangered or a threatened species.

Rio Grande Headwaters GMU—The Rio Grande Headwaters GMU contains 34 percent (41 of 122) of the extant Rio Grande cutthroat trout rangewide populations. If the populations in this GMU were all extirpated, the subspecies in the remainder of the range could be an endangered or threatened species because of the effects to the subspecies' viability due to a substantial reduction in redundancy (loss of large number of populations from a large portion of the range). Therefore, the Rio Grande Headwaters GMU could be significant according to our definition of SPR under the Act.

We next evaluated whether the Rio Grande Headwaters GMU is endangered or threatened. Our review found that there are currently 41 existing populations of the Rio Grande cutthroat trout in the Rio Grande Headwaters GMU. To assess the current status of these populations, we sorted each of them into four categories to consider their current status, which was based on effective population size, occupied stream length, presence of competing nonnative trout, and presence of hybridizing nonnative trout. We categorized 19 of the 41 populations (46 percent) as currently in the best or good condition (Service 2014a, pp. 14–15). This number of reasonably resilient populations within this GMU provides resiliency (46 percent of populations considered sufficiently large to withstand stochastic events), redundancy (19 populations in the GMU to withstand catastrophic events), and representation (multiple populations are persisting within the GMU to maintain ecological and genetic diversity).

To consider the current risk of extinction of the Rio Grande cutthroat trout, we analyzed the condition of this potential SPR over the next 10 years to evaluate its viability (and thus its risk of extinction) and considered all threats with possible population-level effects. In 2023, we projected 41 to 49 populations will persist in the Rio Grande Headwaters GMU under our worst and best case scenarios, respectively (Service 2014a, p. 46). Therefore, because the worst case scenario forecast of the number and distribution of populations provides resiliency, representation, and redundancy for the subspecies in the Rio Grande Headwaters GMU, we conclude the subspecies does not meet the definition of an endangered species under the Act.

Having found that the Rio Grande cutthroat trout is not endangered in the Rio Grande Headwaters GMU, we next evaluated whether the subspecies is threatened in this potential SPR. As with the subspecies rangewide (and for the same reasons), we used about 65 years from present, the year 2080, as the foreseeable future to consider whether the potential SPR is likely to become an endangered species. We also used the same rationale for future forecasting of persisting populations. In 2080, we forecasted 21 to 55 populations will persist in the Rio Grande Headwaters GMU under our worst and best case scenarios, respectively (Service 2014a, p. 46). Therefore, because the worst case scenario forecast of the number and distribution of populations provides resiliency, representation, and redundancy for the subspecies in the Rio Grande Headwaters GMU, we conclude the subspecies does not meet the definition of a threatened species under the Act.

Lower Rio Grande GMU—The Lower Rio Grande GMU contains 48 percent (59 of 122) of the extant Rio Grande cutthroat trout rangewide populations. If the populations in this GMU were all extirpated, the subspecies in the remainder of the range could be an endangered or threatened species because of the effects to the subspecies' viability due to a substantial reduction in redundancy (loss of large number of populations from a large portion of the range). Therefore, the Lower Rio Grande GMU could be significant according to our definition of SPR under the Act.

We next evaluated whether the Lower Rio Grande GMU is endangered or threatened. Our review found that there are currently 59 existing populations of the Rio Grande cutthroat trout in the Rio Grande Headwaters GMU. To assess the current status of these populations, we sorted each of them into four categories to consider their current status, which was based on effective population size, occupied stream length, presence of competing nonnative trout, and presence of hybridizing nonnative trout. We categorized 28 of the populations (47 percent) as currently in the best or good condition (Service 2014a, pp. 14–15). This number of populations in the best or good condition within this GMU provides resiliency (47 percent of populations considered sufficiently large to withstand stochastic events), redundancy (28 populations in the GMU to withstand catastrophic events), and representation (multiple populations are persisting within the GMU to maintain ecological and genetic diversity).

To consider the current risk of extinction of the Rio Grande cutthroat trout, we analyzed the condition of this potential SPR over the next 10 years to evaluate its viability (and thus its risk of extinction) and considered all threats with possible population-level effects. In 2023, we projected 43 to 51 populations will persist in the Lower Rio Grande GMU under our worst and best case scenarios, respectively (Service 2014a, p. 46). Therefore, because the worst case scenario forecast of the number and distribution of populations provides resiliency, representation, and redundancy for the subspecies in the Lower Rio Grande Headwaters GMU, we conclude that the subspecies does not meet the definition of an endangered species under the Act.

Having found that the Rio Grande cutthroat trout is not an endangered species in the Lower Rio Grande GMU, we next evaluated whether the subspecies is a threatened species in this potential SPR. As with the subspecies rangewide (and for the same reasons), we used about 65 years from present, the year 2080, as the foreseeable future to consider whether the potential SPR is likely to become an endangered species. We also used the same rationale for future forecasting of persisting populations . In 2080, we projected 21 to 47 populations will persist in the Lower Rio Grande GMU, respectively (Service 2014a, p. 46). Therefore, because the worst case scenario forecast of the number and distribution of populations provides resiliency, representation, and redundancy for the subspecies in the Lower Rio Grande GMU, we conclude that the subspecies does not meet the definition of a threatened species under the Act.

Canadian GMU—The Canadian GMU contains a small percentage of the existing populations: Currently 8 percent (10 of 122) of current Rio Grande cutthroat trout populations occur in this GMU. If this GMU were extirpated, there would be a decrease in overall viability of the subspecies, as

there would be if any proportion of the populations were extirpated. However, 112 populations would remain in the rest of the range, and the subspecies would still have levels of redundancy, resiliency, and representation for sufficient viability to persist into the future. Although one GMU would no longer be contributing to the representation of the subspecies based on ecological diversity, we are not aware of any particular adaptive capacity of the subspecies represented in that GMU. While there is unique genetic diversity within the combined Canadian and Pecos GMUs, the Canadian GMU independently has not been found to contain unique diversity. Therefore, the lower overall viability resulting from the potential loss of only the Canadian GMU would not lead the remaining portion of the subspecies' range to meet the definition of an endangered or threatened species under the Act. As such, the Canadian GMU is not found to be significant as we define SPR under the Act. Therefore, the subspecies is not an endangered or threatened species in the potential Canadian GMU SPR.

Pecos GMU—The Pecos GMU also contains a small percentage of the existing populations: 10 percent (12 of 122) of current Rio Grande cutthroat trout populations occur in this GMU. If the Pecos GMU were extirpated, there would be a decrease in overall viability of the subspecies, as there would be if any proportion of the populations were extirpated. However, 110 populations would remain in the rest of the range, and the subspecies would still have levels of redundancy, resiliency, and representation for sufficient viability to persist into the future. Although one GMU would no longer be contributing to the representation of the subspecies based on ecological diversity, we are not aware of any particular adaptive capacity of the subspecies represented in that GMU. While there is unique genetic diversity within the combined Canadian and Pecos GMUs, the Pecos GMU independently has not been found to contain unique diversity. Therefore, the lower overall viability resulting from the potential loss of only the Pecos GMU would not lead the remaining portion of the subspecies' range to meet the definition of an endangered or threatened species under the Act. As such, the Pecos GMU is not significant as we define SPR under the Act. Therefore, the subspecies is not an endangered or threatened species in the potential Pecos GMU SPR.

Pecos and Canadian GMUs Combined—The combined Pecos and Canadian GMUs contain a moderate percentage of the existing populations: Currently 18 percent (22 of 122 populations) occur in these GMUs. If the populations in these GMUs were to be extirpated, the loss of the unique genetic diversity contained collectively in these two GMUs and the loss of a sizable portion of the range could cause the subspecies in the remainder of the range to be endangered or threatened. Consequently, the Pecos and Canadian GMUs combined could meet the definition of ''significant'' under the SPR policy. Therefore, we evaluated whether the Rio Grande cutthroat trout is an endangered or a threatened species in the potential SPR of the combined Pecos and Canadian GMUs.

Our review found that there are currently 22 existing populations of the Rio Grande cutthroat trout in the potential Pecos-Canadian SPR. To assess the current status of these populations, we sorted each of them into four categories to consider their current status, which was based on effective population size, occupied stream length, presence of competing nonnative trout, and presence of hybridizing nonnative trout. We categorized eight of the populations (36 percent) as currently in the best or good condition (Service 2014a, pp. 14–15). This number of populations in the best or good condition within this potential SPR provides resiliency (36 percent of populations considered sufficiently large to withstand stochastic events), redundancy (eight populations spread across the potential SPR to withstand catastrophic events), and representation (multiple populations are persisting across the potential SPR to maintain ecological and genetic diversity).

To consider the current risk of extinction of the Rio Grande cutthroat trout, we analyzed the condition of this potential Pecos-Canadian SPR over the next 10 years to evaluate its viability, considering all threats with possible population-level effects. In 2023, we projected an estimated 19 to 30 populations will persist in the potential Pecos-Canadian SPR under our worst and best case scenarios, respectively (Service 2014a, p. 46). Therefore, because this worst case estimate of the number and distribution of populations provides resiliency, representation, and redundancy for the subspecies, we conclude the potential Pecos-Canadian SPR is not in danger of extinction and does not meet the definition of an endangered species under the Act.

Having found that the Rio Grande cutthroat trout is not an endangered species in the potential Pecos-Canadian SPR, we next evaluated whether the subspecies is a threatened species in this potential SPR. As with the subspecies rangewide (and for the same reasons), we used about 65 years from present, the year 2080, as the foreseeable future to consider whether the potential SPR is likely to become an endangered species. We also used the same rationale for future forecasting of persisting populations as discussed above under the rangewide determinations. In 2080, we forecast 8 to 29 populations will persist in the potential Pecos-Canadian SPR under worst and best case scenarios, respectively (Service 2014a, p. 46). Therefore, because the worst case estimate of the number and distribution of populations provides resiliency, representation, and redundancy for the subspecies, we conclude the potential Pecos-Canadian SPR is not likely to be in danger of extinction in the foreseeable future and does not meet the definition of a threatened species under the Act.

Rio Grande Headwaters and Lower Rio Grande GMUs Combined—The combined Rio Grande Headwaters and Lower Rio Grande GMUs contain a large proportion of the range: Currently 82 percent (100 of 122 populations) occur in these GMUs. If the populations in these GMUs were to be extirpated, the loss of the unique genetic diversity contained collectively in these two GMUs and the loss of a large portion of the range could cause the subspecies in the remainder of the range to be endangered or threatened. Consequently, this potential SPR could meet the definition of ''significant'' under the SPR policy. Therefore, we evaluated whether the Rio Grande cutthroat trout is an endangered or a threatened species in the potential SPR of the combined Rio Grande Headwaters and Lower Rio Grande GMUs.

Our review found that there are currently 100 existing populations of the Rio Grande cutthroat trout in the potential Rio Grande Headwaters-Lower Rio Grande SPR. To assess the current status of these populations, we sorted each of them into four categories to consider their current status, which was based on effective population size, occupied stream length, presence of competing nonnative trout, and presence of hybridizing nonnative trout. We categorized 47 of the populations (47 percent) as currently in the best or good condition (Service 2014a, p. 14–15). This number of populations in the best or good condition within this potential Rio Grande Headwaters-Lower Rio Grande SPR provides resiliency (47 percent of populations considered sufficiently large to withstand stochastic events), redundancy (47 populations

spread across the potential SPR to withstand catastrophic events), and representation (multiple populations are persisting across the potential SPR to maintain ecological and genetic diversity).

To consider the current risk of extinction of the Rio Grande cutthroat trout, we analyzed the condition of this potential Rio Grande Headwaters-Lower Rio Grande SPR over the next 10 years to evaluate its viability, considering all threats with possible population-level effects. In 2023, we forecasted 84 to 101 populations will persist in the potential Rio Grande Headwaters-Lower Rio Grande SPR under our worst and best case scenarios, respectively (Service 2014a, p. 46). Therefore, because the worst case scenario for the number and distribution of populations provides resiliency, representation, and redundancy for the subspecies, we conclude the potential Rio Grande Headwaters-Lower Rio Grande SPR is not in danger of extinction and does not meet the definition of an endangered species under the Act.

Having found that the Rio Grande cutthroat trout is not an endangered species in the potential Rio Grande Headwaters-Lower Rio Grande SPR, we next evaluated whether the subspecies is a threatened species in this potential SPR. As with the subspecies rangewide (and for the same reasons), we used about 65 years from present, the year 2080, as the foreseeable future to consider whether the potential SPR is likely to become endangered. We also used the same rationale for future forecasting of persisting populations as discussed above under the rangewide determinations. In 2080, we forecasted 42 to 102 populations would persist in this potential SPR under our worst and best case scenarios, respectively, with multiple populations in each GMU (Service 2014a, p. 46). Therefore, because the worst case scenario for the number and distribution of populations provides resiliency, representation, and redundancy for the subspecies, we conclude the potential Rio Grande Headwaters-Lower Rio Grande SPR is not likely to be in danger of extinction in the foreseeable future and does not meet the definition of a threatened species under the Act.

Finding: Not an Endangered or a Threatened Species Based on a SPR

We found two GMUs (Canadian and Pecos GMUs) did not meet our definition of significant in the SPR policy. We found four portions of the range that could meet our definition of significant under the SPR policy: Rio Grande Headwaters GMU, Lower Rio Grande GMU, Pecos and Canadian GMUs Combined, and Rio Grande Headwaters and Lower Rio Grande GMUs Combined. However, none of these portions of the range was found to meet the definition of an endangered or a threatened species under the Act. As a result, none of the potential SPR categorizations result in the subspecies meeting the definition of endangered or threatened under the Act.

Summary

In conclusion, we find that the Rio Grande cutthroat trout is not in danger of extinction throughout its range, nor is it likely to become so in the foreseeable future. We also considered a number of areas concerning the potential for the subspecies to be an endangered or threatened species in a significant portion of its range. We found that four areas could meet our definition of significant; however, none of the potential SPRs was found to be in danger of extinction now or in the foreseeable future. Therefore, we determine that the Rio Grande cutthroat trout is not warranted for listing as an endangered or a threatened species under the Act throughout its rangewide or in any significant portion of its range.

We request that you submit any new information concerning the status of, or threats to, the Rio Grande cutthroat trout to our New Mexico Ecological Services Field Office (see **ADDRESSES**) whenever it becomes available. New information will help us monitor the Rio Grande cutthroat trout and encourage its conservation. If an emergency situation develops for Rio Grande cutthroat trout, we will consider an appropriate response under the Act.

References Cited

A complete list of references cited is available in Appendix D of the SSA Report (Service 2014a, Appendix D), available online at *http://www.regulations.gov,* under Docket Number FWS–R2–ES–2014–0042. The Service's PECE Evaluation (Service 2014b) is also available online at *http://www.regulations.gov,* under Docket Number FWS–R2–ES–2014–0042.

Authors

The primary authors of this notice are the staff members of the Service's New Mexico Ecological Services Field Office and Southwest Regional Office.

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 23, 2014.

David Cottingham,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2014–23305 Filed 9–30–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140529461–4795–02]

RIN 0648–BE26

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery

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

ACTION: Final rule.

SUMMARY: Based on a request from the U.S. Food and Drug Administration, NMFS is lifting the closure area referred to as the Northern Temporary Paralytic Shellfish Poisoning Closed Area for the harvest of bivalve molluscan shellfish. NMFS is taking this action because this area has not been subject to a toxic algal bloom for several years, and testing of bivalve shellfish has demonstrated toxin levels are well below those known to cause human illness. This action is expected to provide additional fishing opportunity for bivalves in the Gulf of Maine.

DATES: This rule is effective October 1, 2014 through December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Jason Berthiaume, Fishery Management Specialist, phone: (978) 281–9177, or *Jason.Berthiaume@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 2005, at the request of the U.S. Food and Drug Administration (FDA), NMFS closed an area of Federal waters off the coasts of New Hampshire and Massachusetts to fishing for bivalve shellfish due to the presence in those waters of the toxins that cause paralytic shellfish poisoning (PSP) pursuant to section 305(c)(3) of the Magnuson-Stevens Fishery Conservation and Management Act. Shellfish contaminated with the toxin, if eaten in large enough quantity, can cause illness or death from PSP. NMFS modified the closure area several times from 2005–2008, and subsequently continued the

closure through 2013. Beginning in 2014, NMFS also prohibited the harvest of gastropods (whelks/conchs) in the closed area.

Recently, NMFS, the FDA, the clam industry, and the Massachusetts Division of Marine Fisheries (MA DMF) investigated whether this closure is still warranted. On May 19, 2014, the FDA requested that NMFS reopen the area known as the Northern Temporary PSP Closed Area for bivalve harvesting. This request is based on the premise that the closed area has not been subject to a toxic algal bloom for several years, and that testing of bivalve shellfish has demonstrated toxin levels well below those known to cause human illness. In addition, the FDA has developed an agreement with the Commonwealth of Massachusetts to conduct PSP monitoring of bivalves from the area in accordance with currently accepted PSP testing procedures. MA DMF agreed to test the reopened waters to determine whether samples of bivalve shellfish harvested from the closed area exceed the threshold for public safety. The MA DMF will inform NMFS if samples from the closed area exceed the threshold for public safety, and we would work with the FDA to reinstate the closure, if necessary.

Approved Measures

This action reopens the area referred to as the Northern Temporary PSP Closed Area to bivalve harvesting in the Atlantic surfclam, ocean quahog, mussels, and other bivalve fisheries. The areas defined at 50 CFR 648.81(d) and (e), referred to as the Cashes Ledge and the Western Gulf of Maine Essential Fish Habitat Areas (EFH), respectively, overlap with the area that would be reopened. These overlapping EFH areas remain closed to hydraulic clam dredge gear. The area remains closed to the harvest of whole or roe-on scallops and gastropods. Whole and roe-on scallops and gastropods are believed to be more susceptible to PSP, and may accumulate and retain much higher levels of toxicity. In addition, sufficient data do not exist to demonstrate that it would be safe to lift the closure for gastropods or whole and roe-on scallops. NMFS, the FDA, and MA DMF are working with the fishing industry to collect samples to help determine whether the area could also be opened to whole or roe-on scallops and gastropods in the future.

Comments and Responses

NMFS published a proposed rule in the **Federal Register** on July 7, 2014 (79 FR 38274), and accepted public comments until July 22, 2014. We received 17 comments: 11 in support of lifting the closure; 5 opposed; and a comment from the New England Fishery Management Council requesting that we extend the comment period.

Comments Received in Support of Lifting the Closure: Comments received in support of lifting the closure were from the surfclam industry including vessel captains, crew members, and dealers. These comments were similar in nature, and explained that it would be beneficial for the industry to be able to access resources in the area. These commenters requested that we open the area as soon as possible, suggesting that the closure should have been lifted a long time ago.

Response: Because there have been no recent occurrence of PSP causing toxins with the area, this action reopens the Northern Temporary PSP Closed Area for Atlantic surfclam, ocean quahog, mussel, and other bivalves. Sufficient testing protocols have been established to determine if samples of bivalve shellfish exceed the threshold for public safety.

Comments Received Opposing Lifting the Closure: We received comments in opposition to lifting the closure from surfclam dealers and business interests, primarily the Mid-Atlantic and offshore components of the fishery. These commenters did not support the reopening because they believe that the proposed testing procedure is less intensive than the testing that is currently required in the recently reopened offshore Georges Bank area. The commenters are concerned that the proposed protocol is not rigorous enough, and could potentially allow surfclams into the market that are not safe for human consumption, which would damage the surfclam market. They also raised equity concerns in that the costs of the George Banks testing are funded by the surfclam industry; the testing protocols proposed in this area would be funded and carried out by MA DMF.

Response: While the comments in opposition to lifting the closure appear to make some valid points, there is a rationale for the differences in the testing procedures for the offshore versus inshore areas. The protocol used on Georges Bank was evaluated extensively via a pilot study prior to being approved as a biotoxin management strategy for this specific purpose. The FDA states that there may be distinctions between the toxin profiles in offshore waters versus inshore areas and that the offshore protocol would need to be evaluated for each specific purpose, including extending its application to different geographical regions and/or different species of molluscs. The offshore Georges Bank protocol has not yet been used in inshore areas and, as such, it is not known if the Georges Bank testing protocol would be adequate for testing in the inshore areas, including the Northern PSP Area. However, there are efforts underway that would evaluate the extension of the protocol. The testing procedure that we proposed in this rule reflects the testing that is commonly done in state waters, and is readily accepted and proven to work for inshore waters. In considering these comments, the FDA and MA DMF remain confident that the testing procedure we proposed is adequate to ensure public safety while allowing bivalves to be harvested from the Northern Temporary PSP Closed Area.

In addition, the fishery that would be carried out in the inshore Northern Temporary PSP Closed Area would be done at a much smaller scale than the offshore Georges Bank area. As such, it would likely not be feasible at this time to use the Georges Bank protocol in the Northern PSP Area. The offshore protocol includes onboard testing done by trained crew members, product segregation, acquiring additional permits, and dockside laboratory testing to be paid for by the industry. Given the smaller scale fishery that would likely occur in the Northern PSP Area, MA DMF is capable of funding and conducting testing of the inshore areas as we proposed based on the expected effort in that area. However, MA DMF would be not capable of doing the testing for the offshore Georges Bank area given the large scale of that type of operation.

Comment Requesting an Extension on the Comment Period: The New England Fishery Management Council submitted a comment requesting that we extend the comment period until after its September 30–October 2, 2014, meeting. The Council expressed concern about potential impacts on species that might be vital to the recovery of important groundfish stocks such as Gulf of Maine cod. The Council is concerned that there may be gear impacts specific to this area that have not been evaluated with respect to the harvest of a variety of bivalve species.

Response: We do not think it is necessary to extend the comment period. The Council's rationale for extending is largely due to habitat concerns. However, the area reopened as part of this action is already open to mobile bottom-tending gear such as scallop dredge gear. Because we do not anticipate a lot of clam fishing in the area, we do not expect significant additional habitat impacts. In addition,

the PSP area does not overlap with any currently pending habitat management areas under consideration in the Council's Omnibus Habitat Amendment. The regulations prohibiting mobile bottom-tending gear fishing in the current Western Gulf of Maine Closure Area would continue to apply to clam dredges. It is also impractical to delay this action due to the timelines associated with the rulemaking process. Extending the comment period as suggested could result in the closure not being lifted until close to the end of the year, and just before the closure is set to expire anyway. This would unnecessarily reduce the potential economic benefit of reopening the area, and would not likely result in additional information that would affect efforts to protect bottom habitat under other Council initiatives.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this final rule is consistent with the Atlantic Surfclam and Ocean Quahog Fishery Management Plan, other provisions of the Magnuson-Stevens Act, and other applicable law.

Pursuant to the APA, 5 U.S.C. 553(d)(1), NMFS has determined that good cause exists to waive the 30-day delay in effectiveness of this rule because delaying the effectiveness of this rule is contrary to the public interest. This final rule will reopen an area that has been closed to the harvest of surfclams and ocean quahogs since 2005 due to red tide blooms that cause PSP. Recent testing in the Northern Temporary PSP Closed Area has demonstrated that PSP toxin levels were below the regulatory limit established for public health safety. Therefore, continued closure of the area may not be necessary and could unnecessarily restrict Atlantic surfclam and ocean quahog fishing. This closure spans a large portion of the inshore coast of New England, which has prevented this fishery from occurring within the area. As a result, harvesting has been limited to the Mid-Atlantic, where Atlantic surfclam and ocean quahog stocks have recently become less abundant. A 30-day delay in effectiveness would continue to prohibit harvest from this area, and would continue to put pressure on Mid-Atlantic stocks. Waiving the 30-day delay would allow the area to be reopened sooner, which could relieve fishing pressure on southern stocks, and would allow for greater distribution of Atlantic surfclam and ocean quahog harvest effort in the region. Thus, a delay in effectiveness could result in continued loss of revenue for the Atlantic surfclam and ocean quahog fishing fleet. In addition, waiving the 30-day delay in effectiveness will not have a negative impact on any entities, as there are no new compliance requirements or other burdens placed on the fishing community with this rule. Therefore, because this action relieves the industry of regulations, NMFS has determined that good cause exists to waive the 30-day delay in effectiveness of this rule.

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

This final rule does not contain policies with federalism or ''takings'' implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This action does not contain any new recordkeeping or reporting requirements, and does not impose any additional costs to affected vessels.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was provided in the proposed rule for this action (July 7, 2014; 79 FR 38274) and is not repeated here. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 25, 2014.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 648 is amended to read as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.14, effective October 1, 2014 through December 31, 2014, paragraph (a)(10)(iii) is suspended and paragraph (a)(10)(vi) is added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(10)* * *

(vi) Fish for, harvest, catch, possess or attempt to fish for, harvest, catch, or possess any sea scallops, except for sea scallops harvested only for adductor muscles and shucked at sea, and any gastropod species, including whelks, conchs, and carnivorous snails, unless issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing the collection of shellfish and/or gastropods for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated:

(A) 43°00′ N. lat., 71°00′ W. long.;

(B) 43°00′ N. lat., 69°00′ W. long.;

(C) 41°39′ N. lat., 69°00′ W. long.;

(D) 41°39′ N. lat., 71°00′ W. long.; and then ending at the first point.

* * * * *

[FR Doc. 2014–23324 Filed 9–30–14; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 190
Wednesday, October 1, 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 431

[Docket Number EERE–2014–BT–PET–0041]

Energy Conservation Program for Certain Commercial and Industrial Equipment: Walk-in Coolers and Freezers; Test Procedure

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

ACTION: Notice of public meeting.

SUMMARY: The Department of Energy (DOE) is planning to hold a public meeting to discuss the various aspects related to testing and calculating the energy efficiency ratings for refrigeration systems used in walk-in coolers and freezers (WICFs). The discussion will focus solely on the mechanics of measuring the relevant values and the downstream calculations needed to rate the efficiency of WICF refrigeration system basic models that are either sold as mixed or matched systems.

DATES: *Meeting:* DOE will hold a public meeting on Wednesday, October 22, 2014 from 9:00 a.m. to 1:00 p.m. in Washington, DC. In addition, DOE plans to broadcast the public meeting via webinar. You may attend the public meeting either in person or via webinar. Registration information, participant instructions, and also information about the capabilities available to webinar participants will be published in advance on DOE's Web site at: *http://www.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/26.* Webinar participants are responsible for ensuring their systems are compatible with the webinar software.

ADDRESSES: U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Room GH–019. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures. Please also note that any person wishing to bring a laptop into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. Persons may also attend the public meeting via webinar.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required.

DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government issued Photo-ID card.

FOR FURTHER INFORMATION CONTACT: Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121, (202) 586–6590, email: *Ashley.Armstrong@ee.doe.gov.* Michael Kido, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8145, email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) is holding a public meeting to discuss a variety of issues related to the testing and calculation of the energy efficiency of refrigeration systems used in walk-in coolers and walk-in freezers (collectively, ''walk-ins'' or ''WICFs''). A walk-in is an enclosed storage space refrigerated to temperatures ''above, and at or below'' (depending on whether it is a cooler or freezer) 32 °F that can be walked into, and has a total chilled storage area of less than 3,000 square feet. See 42 U.S.C. 6311(20). Each walk-in is comprised of three key types of components: Panels used for the ceiling, walls, and (for freezers) the floor; at least one door; and a refrigeration system.

At its most basic level, a refrigeration system uses two primary components—an evaporator coil unit and a condensing unit. Both of these components are connected together through the use of a refrigerant line. Within the refrigeration system market, some manufacturers produce both components, effectively creating a complete system for purposes of being able to rate the efficiency of a given walk-in refrigeration system. Other manufacturers, however, produce only the evaporator coils or the condensing unit. Recent modifications to DOE's WICF test procedure enable manufacturers in these single component-only scenarios to readily calculate the energy efficiency of their respective unit using specified default values for the other refrigeration system component that they do not manufacture. See 79 FR 27388 (May 13, 2014). Those recent modifications also allow manufacturers of walk-in refrigeration systems to use a mathematical model or computer simulation, known generically as alternative efficiency determination methods (AEDMs), in lieu of conducting a test when rating a WICF refrigeration system's energy efficiency.

The scheduled meeting is intended to assist interested parties, particularly those individual manufacturers who produce only one of the two primary refrigeration system components noted above, with applying DOE's calculation methodology when rating the efficiency of that manufacturer's component. This calculation methodology must be used when determining whether a manufacturer's individual component complies with the applicable energy conservation standards DOE recently issued, compliance with which is required as of June 5, 2017. See 79 FR 32050 (June 3, 2014).

DOE plans to discuss the following issues:

- The scope of the refrigeration system test procedure, particularly, identifying which refrigeration components fall within the scope of DOE's walk-in regulations;
- the operation of the test procedure's methodology, including the methods used to calculate defrost energy consumption;
- the application of the test procedure when rating different walk-in refrigeration systems (i.e., mixed versus matched systems);
- the calculation of the ratings of a given walk-in refrigeration system component when only component (i.e. the evaporator coil unit or condenser unit) is produced; and
- the AEDM requirements as they apply to walk-in refrigeration systems.

DOE encourages all interested persons to submit questions to DOE that are relevant to the above topics in advance of the meeting date to ensure that the agency is able to fully address these topics. As the intent of this meeting is to help manufacturers to better understand how to rate their equipment, DOE will not be discussing the methodology or analysis used in developing the recently amended energy conservation standards for walk-in refrigeration systems.

Issued in Washington, DC, on September 23, 2014.

Kathleen B. Hogan,

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

[FR Doc. 2014–23417 Filed 9–30–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EERE–2009–BT–BC–0021]

10 CFR Part 460

RIN 1904–AC11

Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC)—Manufactured Housing Working Group

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

ACTION: Notice of extension of term; and Open meetings.

SUMMARY: This notice announces a term extension for the Manufactured Housing Working Group (MH Working Group) and open meetings. More time is needed for the working group to continue negotiations towards consensus on proposed Federal standards for the energy efficiency of manufactured homes, as authorized by section 413 of the Energy Independence and Security Act of 2007 (EISA).

DATES: The Manufactured Housing working group charter will be extended until November 1, 2014.

The meetings will be held from 9:00 a.m. to 5:00 p.m.:

- October 1–2, 2014
- October 23–24, 2014

ADDRESSES: The October 1–2, 2014 meetings will be held at U.S. Department of Energy, Forrestal Building, Room GH–019, 1000 Independence Avenue SW., Washington, DC 20585. The October 23–24, 2014 meetings will be held at U.S. Department of Energy, Golden Field Office, 15013 Denver West Parkway, Golden, Colorado 80401. A room number has not yet been set for the October 23–24, 2014 meetings in Golden, CO. Once a room number is set it will be stated on the DOE Rulemaking for Manufactured Housing Energy Conservation Standards Web page at *http://www.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=97.*

Individuals will also have the opportunity to participate by webinar. To register for the webinar and receive call-in information, please register at *http://energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee.*

FOR FURTHER INFORMATION CONTACT: Joe Hagerman, Senior Advisor, Building Technologies Office, EE–5B, U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, 950 L'Enfant Plaza SW., Washington, DC 20024. Phone: 202–586–4549; Email: *asrac@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background

ASRAC set a deadline of September 30, 2014 for the MH Working Group to negotiate proposed Federal standards for the energy efficiency of manufactured homes. The MH Working Group has held six public meetings between August and September, 2014.

More time is needed for the MH Working Group to continue negotiations towards consensus on proposed Federal standards for the energy efficiency of manufactured homes. ASRAC approved an extension of the term of the MH Working Group until November 1, 2014.

The MH Working Group will meet on October 1–2, 2014 and October 23–24, 2014 at the addresses provided in the **ADDRESSES** section. Information regarding the background of the MH Working Group and public participation in the meetings was outlined in a previous **Federal Register** notice published on August 15, 2014. See 79 FR 48097.

Issued in Washington, DC, on September 24, 2014.

Kathleen B. Hogan,

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

[FR Doc. 2014–23422 Filed 9–30–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0655; Directorate Identifier 2013–NM–070–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2007–14–05, for all Airbus Model A310 and Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). AD 2007–14–05 currently requires revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness by incorporating certain certification maintenance requirements. Since we issued AD 2007–14–05, we have determined that more restrictive maintenance requirements and airworthiness limitations are necessary. This proposed AD would require revising the maintenance or inspection program to incorporate more restrictive maintenance requirements and airworthiness limitations. We are proposing this AD to prevent safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition of avionics, hydraulic systems, fire detection systems, fuel systems, or other critical systems.

DATES: We must receive comments on this proposed AD by November 17, 2014.

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

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

- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0655; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0655; Directorate Identifier 2013–NM–070–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On June 26, 2007, we issued AD 2007–14–05, Amendment 39–15127 (72 FR 39307, July 18, 2007). AD 2007–14–05 requires actions intended to address an unsafe condition on all Airbus Model A310 and A300–600 series airplanes.

Since we issued AD 2007–14–05, Amendment 39–15127 (72 FR 39307, July 18, 2007), we have determined that more restrictive maintenance requirements and airworthiness limitations are necessary. The European Aviation Safety Agency (EASA), which is the aviation authority for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0072, dated March 20, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> The airworthiness limitations for Airbus aeroplanes are currently published in Airworthiness Limitations Section (ALS) documents.
>
> The airworthiness limitations applicable to the A300–600 and A300–600ST Certification Maintenance Requirements (CMR) were previously specified in the Airbus A300–600 CMR document referenced AUST5/829//85. DGAC [Direction Générale de l'Aviation Civile] France issued AD F2005–123 *http://ad.easa.europa.eu/blob/easa_ad_F_2005_123.pdf/AD_F-2005-123* (EASA approval 2005–6070) [which corresponds to FAA AD 2007–14–05, Amendment 39–15127] to require compliance to the requirements as specified in this document.
>
> Since that AD was issued, the CMR tasks are now specified in Airbus A300–600 and Airbus A310 ALS Part 3 documents, which are approved by the European Aviation Safety Agency (EASA). These documents introduce more restrictive maintenance requirements and/or airworthiness limitations. Failure to comply with the maintenance requirements contained in these documents could result in an unsafe condition.
>
> For the reasons described above, this new [EASA] AD retains the requirements of DGAC France AD F–2005–123, which is superseded, and requires the implementation of the new or more restrictive maintenance requirements as specified in Airbus A310 ALS Part 3 Revision 00 and A300–600 ALS Part 3 Revision 00, as applicable to the aeroplane type/model.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0655.

Relevant Service Information

Airbus has issued A310 ALS Part 3, Certification Maintenance Requirements (CMR), dated November 30, 2012. Airbus has also issued A300–600 ALS Part 3, Certification Maintenance Requirements (CMR), dated April 18, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 156 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
Retained actions from AD 2007–14–05 Amendment 39–15127 (72 FR 39307, July 18, 2007).	1 work-hour × $85 per hour = $85.	$0	$85	$13,260
Revision of maintenance or inspection program [new proposed action].	1 work-hour × $85 per hour = $85.	0	85	13,260

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. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2007–14–05, Amendment 39–15127 (72 FR 39307, July 18, 2007), and adding the following new AD:

Airbus: Docket No. FAA–2014–0655; Directorate Identifier 2013–NM–070–AD.

(a) Comments Due Date

We must receive comments by November 17, 2014.

(b) Affected ADs

This AD replaces AD 2007–14–05, Amendment 39–15127 (72 FR 39307, July 18, 2007).

(c) Applicability

This AD applies to all Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; and all Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes, Model A300 B4–605R and B4–622R airplanes, Model A300 F4–605R and F4–622R airplanes, and Model A300 C4–605R Variant F airplanes; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that more restrictive maintenance requirements and airworthiness limitations are necessary. We are issuing this AD to prevent safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition of avionics, hydraulic systems, fire detection systems, fuel systems, or other critical systems.

(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) Retained Revision to the Airworthiness Limitations Section of the Instructions for Continued Airworthiness

This paragraph restates the requirements of paragraph (f) of AD 2007–14–05, Amendment 39–15127 (72 FR 39307, July 18, 2007), with no changes. Within 3 months after August 22, 2007 (the effective date of AD 2007–14–05), revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness by incorporating Airbus A300–600 Certification Maintenance Requirements (CMRs) AI/ST5/829/85, Issue 12, dated February 2005 (for Model A300–600 series airplanes); or Airbus A310 CMR AI/ST5/849/85, Issue 12, dated February 2005 (for Model A310 series airplanes); as applicable. Accomplish the actions specified in the applicable CMRs at the intervals specified in the applicable CMRs, except as provided by paragraph (h) of this AD. Where the CMRs specify to contact the Direction Générale de l'Aviation Civile (DGAC), operators are required to contact the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. The actions must otherwise be accomplished in accordance with the applicable CMRs.

(h) Retained Transition/Grace Period for Maintenance Significant Item (MSI) 78.30.00 Tasks

This paragraph restates the requirements of paragraph (g) of AD 2007–14–05, Amendment 39–15127 (72 FR 39307, July 18, 2007), with no changes. For tasks identified in MSI 78.30.00, ''Thrust Reverser Actuation and Cowling,'' of Section 2, ''CMR 'Two Star' Tasks,'' of Airbus A300–600 CMR AI/ST5/829/85, Issue 12, dated February 2005; and Airbus A310 CMR AI/ST5/849/85, Issue 12, dated February 2005: The initial compliance time is within 2,000 flight cycles or 12 months after August 22, 2007 (the effective date of AD 2007–14–05), whichever occurs later. Thereafter, actions identified in MSI 78.30.00 must be accomplished within the repetitive interval specified in the applicable CMRs. Where the CMRs specify to contact the DGAC, operators are required to contact the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, for such approvals. The actions must be accomplished in accordance with the applicable CMRs.

(i) New Maintenance/Inspection Program Revision

Within 3 months after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate Airbus A310 ALS Part 3, Certification Maintenance Requirements (CMR), dated November 30, 2012; or Airbus A300–600 ALS Part 3, Certification Maintenance Requirements (CMR), dated April 18, 2012. Except as required by paragraph (k) of this AD, the initial compliance time for accomplishing the actions is at the applicable time specified in Airbus A310 ALS Part 3, Certification Maintenance Requirements (CMR), dated November 30, 2012, Airbus A300–600 ALS Part 3, Certification Maintenance Requirements (CMR), dated April 18, 2012, as applicable; or within 3 months after the effective date of this AD; whichever occurs later. Accomplishing the requirements in this paragraph terminates the requirements in paragraph (g) of this AD.

(j) New Limitation: No Alternative Actions or Intervals

After accomplishment of the revision required by paragraph (i) of this AD, no alternative actions (e.g., inspections) or intervals, may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l) of this AD.

(k) New Compliance Time for Model A300–600 Series Airplanes

For CMR Task 213000–A0001–1–C, as identified in Sub-section 3–1, CMR Tasks, of the Airbus A300–600 ALS Part 3, Certification Maintenance Requirements (CMR), dated April 18, 2012: The initial compliance time for the task is at the

applicable time specified in paragraphs (k)(1), (k)(2), and (k)(3) of this AD.

(1) For airplanes having accumulated less than 40,000 total flight hours since first flight of the airplane as of the effective date of this AD: Before the accumulation of 40,001 total flight hours.

(2) For airplanes having accumulated 40,000 total flight hours or more since first flight of the airplane as of the effective date of this AD, and on which Aging Systems Maintenance (ASM) Task 213115–04–1, or Maintenance Review Board Report (MRBR) Tasks 21.31.00/06 and 21.31.00/08, have been accomplished: Before the accumulation of 14,000 flight hours after the most recent accomplishment of ASM Tasks 213115–04–1, or MRBR Tasks 21.31.00/06 and 21.31.00/08, whichever occurs later.

(3) For airplanes having accumulated 40,000 total flight hours or more since first flight of the airplane as of the effective date of this AD, and on which ASM Task 213115–04–1, or MRBR Tasks 21.31.00/06 and 21.31.00/08, have not been accomplished: Within 3 months after the effective date of 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

(2) Contacting the Manufacturer: As of the effective date of this AD, 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 (MCAI) EASA Airworthiness Directive 2013–0072, dated March 20, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0655.

(2) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 20, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–23375 Filed 9–30–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0653; Directorate Identifier 2014–NM–057–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. 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 Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This proposed AD was prompted by reports of cracking on the skin panels and skin splice joints and angles at certain stringers at various locations between certain fuselage stations. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate new or revised maintenance requirements and airworthiness limitations, and incorporating structural repairs and modifications to preclude widespread fatigue damage (WFD). We are proposing this AD to detect and correct WFD, which could adversely affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by November 17, 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.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–2014–0653; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7329; fax: 516–794–5531; email: *aziz.ahmed@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–2014–0653; Directorate Identifier 2014–NM–057–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://*

www.regulations.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Structural fatigue damage is progressive. It begins as minute cracks, and those cracks grow under the action of repeated stresses. This can happen because of normal operational conditions and design attributes, or because of isolated situations or incidents such as material defects, poor fabrication quality, or corrosion pits, dings, or scratches. Fatigue damage can occur locally, in small areas or structural design details, or globally. Global fatigue damage is general degradation of large areas of structure with similar structural details and stress levels. Multiple-site damage is global damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Global damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site-damage and multiple-element-damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane, in a condition known as widespread fatigue damage (WFD). As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2014–07, dated January 31, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. The MCAI states:

> Complete aeroplane fatigue testing on a CL–600–2B19 aeroplane by the aeroplane manufacturer revealed the onset of simultaneous cracking on the skin panels and skin splice joints and angles at stringers number 6 and 20 at various locations between fuselage stations (FS) 409.00 to FS 589.00.
>
> Cracks at multiple locations may reduce the residual strength of the joint below the required levels if the cracks are not detectable under the existing maintenance program established at the time of certification. This multiple site damage (MSD) behavior, if not corrected, could lead to widespread fatigue damage (WFD) and adversely affect the structural integrity of the aeroplane and/or could result in rapid decompression of the aeroplane.
>
> A Temporary Revision (TR) has been made to the Maintenance Requirements Manual (MRM) to revise existing Airworthiness Limitations (AWL) tasks and introduce new inspection tasks for the detection of MSD. The aeroplane manufacturer is also developing a structural modification to preclude WFD from occurring in the fleet at these locations.
>
> This [Canadian] AD mandates the incorporation of the new and revised AWL tasks [into the maintenance program], and a structural modification to preclude WFD.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0653.

Relevant Service Information

Bombardier has issued the following AWL tasks to Part 2 Airworthiness Requirements, Revision 9, dated June 10, 2013, of Appendix B, Airworthiness Limitations, of Bombardier CL–600–2B19, Maintenance Requirements Manual, CSP A–053:

- AWL Task 53–41–109, ''Longitudinal Str. 6 splice at STR 6 and 20'';
- AWL Task 53–41–110, ''Longitudinal Str. 6 splice butt strap at Str. 6, FS409.0 to FS617.0'';
- AWL Task 53–41–204, ''Frame splice angles at STR 6 and 20''; and
- AWL Task 53–41–205, ''Longitudinal skin splice at STR 6 and 20''.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j) of this proposed AD. The request should include a description of changes to the required actions that will ensure the continued damage tolerance of the affected structure.

Differences Between This Proposed AD and the MCAI or Service Information

The TCCA AD specifies that, if there are findings from the airworthiness limitations section (ALS) inspection tasks, then corrective action must be accomplished in accordance with Bombardier. But this proposed AD does not include that requirement because operators of U.S.-registered airplanes are required by general airworthiness and operational regulations to use FAA-acceptable methods when performing maintenance. We consider those methods to be adequate to address any

corrective action necessitated by the findings of ALS inspections required by this proposed AD.

Costs of Compliance

We estimate that This proposed AD affects 526 airplanes 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 proposed AD. We have received no definitive data that would enable us to provide cost estimates for the repairs and modifications specified in this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $44,710, 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2014–0653; Directorate Identifier 2014–NM–057–AD.

(a) Comments Due Date

We must receive comments by November 17, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers 7003 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 05, Periodic Inspections.

(e) Reason

This AD was prompted by reports of cracking on the skin panels and skin splice joints and angles at certain stringers at various locations between certain fuselage stations. We are issuing this AD to detect and correct widespread fatigue damage, which could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 60 days after the effective date of this AD: Revise the maintenance or inspection program, as applicable, by incorporating the airworthiness limitations (AWL) tasks specified in paragraphs (g)(1) through (g)(4) of this AD, of Part 2 Airworthiness Requirements, Revision 9, dated June 10, 2013, of Appendix B, Airworthiness Limitations, of Bombardier CL–600–2B19, Maintenance Requirements Manual, CSP A–053. The initial compliance times for the tasks start from the applicable threshold times specified in Part 2 Airworthiness Requirements, Revision 9, dated June 10, 2013, of Appendix B, Airworthiness Limitations, of Bombardier CL–600–2B19, Maintenance Requirements Manual, CSP A–053; except that, for airplanes that have accumulated more than 38,000 total flight cycles as of the effective date of this AD, the initial compliance time for the AWL tasks is before the accumulation of 2,000 flight cycles after the effective date of this AD.

(1) AWL Task 53–41–109, ''Longitudinal Str. 6 splice at STR 6 and 20.''

(2) AWL Task 53–41–110, ''Longitudinal Str. 6 splice butt strap at Str. 6, FS409.0 to FS617.0.''

(3) AWL Task 53–41–204, ''Frame splice angles at STR 6 and 20.''

(4) AWL Task 53–41–205, ''Longitudinal skin splice at STR 6 and 20.''

(h) No Alternative Actions or Intervals

After the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(i) Repairs and Modifications

Before the accumulation of 60,000 total flight cycles: Install repairs and modifications to preclude widespread fatigue damage at locations specified in paragraphs (g)(1) through (g)(4) of this AD, using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York ACO, ANE–170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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, New York ACO, ANE–170, Engine and Propeller Directorate, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO,

the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2014–07, dated January 31, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0653.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 20, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–23376 Filed 9–30–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0652; Directorate Identifier 2014–NM–076–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A319 series airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321 series airplanes. This proposed AD was prompted by reports of cracks that could be initiated at the waste water service panel area and the potable water service panel area. This proposed AD would require modification of the potable water service panel and waste water service panel, including doing applicable related investigative and corrective actions. We are proposing this AD to prevent any cracking at the waste water service panel area and the potable water service panel area, which could affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by November 17, 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed 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.

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–2014–0652; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: 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:

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–2014–0652; Directorate Identifier 2014–NM–076–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2014–0081, dated March 31, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A319; Model A320–211, –212, –214, –231, –232, and –233; and Model A321 series airplanes. The MCAI states:

> During the full scale fatigue test on A320–200, it has been noticed that, due to fatigue, cracks could be initiated at the waste water service panel area and the potable water service panel area.
>
> This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.
>
> Prompted by these findings, ALS [airworthiness limitations section] Part 2 tasks have been introduced for the affected A320 family aeroplanes. Since those actions were taken, Airbus developed production mod 160055 and mod 160056 to embody reinforcements (cold working on certain rivet rows) of the potable water and waste water service panels, and published associated Airbus Service Bulletin (SB) A320–53–1272 (retrofit mod 153074) and SB A320–53–1267 (retrofit mod 153073) for in-service embodiment.
>
> Following complementary Design Office studies, it appears that the Sharklet installations on certain aeroplanes have a significant impact on the aeroplane structure (particularly, A319 and A320 post-mod 160001, and A321 post-mod 160021), leading to different compliance times, depending on aeroplane configuration.
>
> For the reasons described above, this [EASA] AD requires reinforcement of the potable water and waste water service panels. Accomplishment of these modifications cancels the need for the related ALS Part 2 Tasks.

The modification includes doing applicable related investigative and corrective actions. Related investigative

actions include measuring the diameter of a hole of a fastener and a rotating probe inspection. Corrective actions include repairs. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0652.

Relevant Service Information

Airbus has issued Service Bulletin A320–53–1267, Revision 01, dated October 2, 2013; and Service Bulletin A320–53–1272, Revision 02, dated May 19, 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 This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 851 airplanes of U.S. registry.

We also estimate that it would take about 25 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $420 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $2,165,795, or $2,545 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2014–0652; Directorate Identifier 2014–NM–076–AD.

(a) Comments Due Date

We must receive comments by November 17, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category, all manufacturer serial numbers, except those on which Airbus Modification 160055 or Airbus Modification 160056 has been embodied in production.

(1) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(2) Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(3) Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by reports of cracks that could be initiated at the waste water service panel area and the potable water service panel area. We are issuing this AD to prevent any cracking at the waste water service panel area and the potable water service panel area, which could affect the structural integrity of the airplane.

(f) Compliance

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

(g) Modification

(1) Within the compliance time specified in paragraphs (g)(1)(i), (g)(1)(ii), (g)(1)(iii), (g)(1)(iv), and (g)(1)(v) of this AD, as applicable, modify the potable water service panel, including doing all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1272, Revision 02, dated May 19, 2014, except where Airbus Service Bulletin A320–53–1272, Revision 02, dated May 19, 2014, specifies to contact Airbus, repair before further flight 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). Do all applicable related investigative and corrective actions within the compliance time identified in paragraphs (g)(1)(i), (g)(1)(ii), (g)(1)(iii), (g)(1)(iv), and (g)(1)(v) of this AD.

(i) For Model A319 airplanes pre-modification 160001: Within 48,500 flight cycles or 97,000 flight hours, whichever occurs first since the airplane's first flight.

(ii) For Model A319 airplanes post-modification 160001: Within 46,000 flight cycles or 92,000 flight hours, whichever occurs first since the airplane's first flight.

(iii) For Model A320 airplanes pre-modification 160001: Within 54,200 flight cycles or 108,400 flight hours, whichever occurs first since the airplane's first flight.

(iv) For Model A320 airplanes post-modification 160001: Within 36,000 flight cycles or 72,000 flight hours, whichever occurs first since the airplane's first flight.

(v) For Model A321 airplanes: Within 60,000 flight cycles or 120,000 flight hours, whichever occurs first since the airplane's first flight.

(2) Within the compliance time specified in paragraphs (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), and (g)(2(vi) of this AD, as applicable, modify the waste water service panel, including doing all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–

53–1267, Revision 01, dated October 2, 2013, except where Airbus Service Bulletin A320–53–1267, Revision 01, dated October 2, 2013, specifies to contact Airbus, repair before further flight using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. Do all applicable related investigative and corrective actions within the compliance time identified in paragraphs (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), and (g)(2)(v) of this AD.

(i) For Airbus A319 airplanes pre-modification 160001: Within 44,400 flight cycles or 88,800 flight hours, whichever occurs first since the airplane's first flight.

(ii) For Airbus A319 airplanes post-modification 160001: Within 43,600 flight cycles or 87,200 flight hours, whichever occurs first since the airplane's first flight.

(iii) For Airbus A320 airplanes pre-modification 160001, within the compliance times identified in paragraph (g)(2)(iii)(A) or (g)(2)(iii)(B) of this AD, whichever occurs later:

(A) Within 46,400 flight cycles or 92,800 flight hours, whichever occurs first since the airplane's first flight.

(B) Within 2,300 flight cycles or 4,600 flight hours, whichever occurs first since last accomplishment of Airworthiness Limitation Section (ALS) Part 2 Task No. 534126–01–3 without exceeding 48,000 flight cycles or 96,000 flight hours, whichever occurs first since the airplane's first flight.

(iv) For Airbus A320 airplanes post-modification 160001: Within 39,200 flight cycles or 78,400 flight hours, whichever occurs first since the airplane's first flight.

(v) For Airbus A321 airplanes pre-modification 160021: Within 51,600 flight cycles or 103,200 flight hours, whichever occurs first since the airplane's first flight.

(vi) For Airbus A321 airplanes post-modification 160021: Within 51,200 flight cycles or 102,400 flight hours, whichever occurs first since the airplane's first flight.

(h) Corrective Action

For Airbus A320 airplanes having pre-modification 160001, that have exceeded 46,400 flight cycles or 92,800 flight hours, whichever occurred first since the airplane's first flight: If any crack is found during accomplishment of ALS Part 2 Task 534126–01–3 done, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(i) Terminating Action for ALS Task

(1) Modification of an airplane as required by paragraph (g)(1) of this AD, terminates the requirement for the ALS Part 2 Task for that airplane as identified in paragraphs (i)(1)(i), (i)(1)(ii), (i)(1)(iii), (i)(1)(iv), (i)(1)(v), and (i)(1)(vi) of this AD, as applicable.

(i) For Airbus A319 airplanes pre-modification 160001: ALS Part 2 Task No. 534125–01–2.

(ii) For Airbus A319 airplanes post-modification 160001: ALS Part 2 Task No. 534125–01–5.

(iii) For Airbus A320 airplanes pre-modification 160001: ALS Part 2 Task No. 534125–01–3.

(iv) For Airbus A320 airplanes post-modification 160001: ALS Part 2 Task No. 534125–01–6.

(v) For Airbus A321 airplanes pre-modification 160021: ALS Part 2 Task No. 534125–01–4.

(vi) For Airbus A321 airplanes post-modification 160021: ALS Part 2 Task No. 534125–01–7.

(2) Modification of an airplane as required by paragraphs (g)(2) and (g)(3) of this AD, terminates the requirement for the ALS Part 2 task for that airplane as identified in paragraphs (i)(2)(i), (i)(2)(ii), (i)(2)(iii), (i)(2)(iv), (i)(2)(v), and (i)(2)(vi) of this AD, as applicable.

(i) For Airbus A319 airplanes pre-modification 160001: ALS Part 2 Task No. 534126–01–2.

(ii) For Airbus A319 airplanes post-modification 160001: ALS Part 2 Task No. 534126–01–5.

(iii) For Airbus A320 airplanes pre-modification 160001: ALS Part 2 Task No. 534126–01–3.

(iv) For Airbus A320 airplanes post-modification 160001: ALS Part 2 Task No. 534126–01–6.

(v) For Airbus A321 airplanes pre-modification 160021: ALS Part 2 Task No. 534126–01–4.

(vi) For Airbus A321 airplanes post-modification 160021: ALS Part 2 Task No. 534126–01–7.

(j) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g)(1) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–53–1272, dated January 10, 2013; and Airbus Service Bulletin A320–53–1272, Revision 01, dated August 6, 2013; which are not incorporated by reference in this AD.

(2) This paragraph provides credit for actions required by paragraph (g)(2) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–53–1267, dated June 24, 2013, which is not incorporated by reference in this AD.

(k) 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 EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0081, dated March 31, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0652.

(2) 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 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 September 20, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–23366 Filed 9–30–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0651; Directorate Identifier 2014–NM–043–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2013–22–19, which applies to all Gulfstream Aerospace Corporation Model GV and GV–SP airplanes. AD 2013–22–19 currently requires inspecting to determine if fuel boost pumps having a certain part number are installed,

replacing the fuel boost pumps having a certain part number, and revising the airplane maintenance program to include revised instructions for continued airworthiness. Since we issued AD 2013–22–19, we have determined that the maintenance or inspection program, as applicable, must be revised to include new service information. This proposed AD would continue to require revising the airplane maintenance program to include a fuel leak check of the fuel boost pumps, using new service information. We are proposing this AD to prevent fuel leakage in combination with a capacitor clearance issue, which could result in an uncontrolled fire in the wheel well.

DATES: We must receive comments on this proposed AD by November 17, 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 Gulfstream, Triumph Aerostructures, and General Electric (GE) Aviation service information identified in this proposed AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* 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–2014–0651; 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: Darby Mirocha, Continued Operational Safety and Certificate Management, 102A, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5573; fax: 404–474–5606; email: *darby.mirocha@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–2014–0651; Directorate Identifier 2014–NM–043–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On October 25, 2013, we issued AD 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013), for all Gulfstream Aerospace Corporation Model GV and GV–SP airplanes. AD 2013–22–19 requires inspecting to determine if fuel boost pumps having a certain part number are installed, replacing the fuel boost pumps having a certain part number, and revising the airplane maintenance program to include revised instructions for continued airworthiness. AD 2013–22–19 resulted from reports of two independent types of failure of the fuel boost pump with overheat damage found on the internal components and external housing on one of the failure types, and fuel leakage on the other. We issued AD 2013–22–19 to prevent fuel leakage in combination with a capacitor clearance issue, which could result in an uncontrolled fire in the wheel well.

Actions Since AD 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013), Was Issued

Since we issued AD 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013), we have determined that the maintenance or inspection program, as applicable, must be revised to include new service information. We became aware that the service information specified in paragraph (i) of AD 2013–22–19 cannot be used by operators and does not appropriately address the unsafe condition.

Relevant Service Information

We have reviewed the following Gulfstream Customer Bulletins, which describe procedures for inspecting and replacing the fuel boost pumps:

- Gulfstream V Customer Bulletin 197, dated April 11, 2012 (for Model GV airplanes);
- Gulfstream G500 Customer Bulletin 122, dated April 11, 2012 (for Model GV–SP airplanes designated as G500); and
- Gulfstream G550 Customer Bulletin 122, dated April 11, 2012 (for Model GV–SP airplanes designated as G500 or G550).

We also reviewed the following service information, which describes procedures for revising the airplane maintenance or inspection program, as applicable, to include a fuel leak check of the fuel boost pumps, and the inspection intervals:

- Table 18, ''500 Flight Hours Scheduled Inspection Table,'' in section 05–20–00, of chapter 5, Time Limits/Maintenance Checks, of the Gulfstream V Maintenance Manual, Revision 23, dated June 20, 2013;
- Task 28–26–01, Fuel Boost Pumps—Fuel Leak Check, of chapter 28, Fuel, of the Gulfstream V Maintenance Manual, Revision 23, dated June 20, 2013;
- Table 20, ''500 Flight Hours Scheduled Inspection Table,'' in section 05–20–00, of chapter 5, Time Limits/Maintenance Checks, of the Gulfstream G500 Maintenance Manual, Revision 23, dated June 20, 2013;
- Task 28–26–01, Fuel Boost Pumps—Fuel Leak Check, of section 26, Fuel Boost Pumps, of chapter 28, Fuel, of the Gulfstream G500 Maintenance Manual, Revision 23, dated June 20, 2013;
- Table 20, ''500 Flight Hours Scheduled Inspection Table,'' in section 05–20–00, of chapter 5, Time Limits/Maintenance Checks, of the Gulfstream G550 Maintenance Manual, Revision 23, dated June 20, 2013; and
- Task 28–26–01, Fuel Boost Pumps—Fuel Leak Check, of section 26,

Fuel Boost Pumps, of chapter 28, Fuel, of the Gulfstream G550 Maintenance Manual, Revision 23, dated June 20, 2013.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would retain all requirements of AD 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013). This proposed AD also includes new service information for Model GV–SP airplanes designated as Model G500 for the actions required by paragraphs (g) and (h) of this proposed AD.

Explanation of "RC" Steps in Service Information

The FAA worked in conjunction with industry, under the Airworthiness Directives Implementation Aviation Rulemaking Committee, to enhance the AD system. One enhancement was a new process for annotating which steps in the service information are required for compliance with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The actions specified in the service information described previously include steps that are labeled as RC (required for compliance) because these steps have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition. As noted in the specified service information, steps labeled as RC must be done to comply with the proposed AD. However, steps that are not labeled as RC are recommended. Those steps that are not labeled as RC may be deviated from, done as part of other actions, or done using accepted methods different from those identified in the service information without obtaining approval of an alternative method of compliance (AMOC), provided the steps labeled as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps labeled as RC will require approval of an AMOC.

Costs of Compliance

We estimate that this proposed AD affects 357 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 to determine if a certain part number is installed [retained actions from AD 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013)].	1 work-hour × $85 per hour = $85.	$0	$85	$30,345
Maintenance program revision [retained actions from AD 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013)].	1 work-hour × $85 per hour = $85.	0	85	30,345

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

ON-CONDITION COST

Action	Labor cost	Parts cost	Cost per product
Replacement	24 work-hours × $85 per hour = $2,040	$7,600	$9,640

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013), and adding the following new AD:

Gulfstream Aerospace Corporation: Docket No. FAA–2014–0651; Directorate Identifier 2014–NM–043–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by November 17, 2014.

(b) Affected ADs

This AD replaces AD 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013).

(c) Applicability

This AD applies to all Gulfstream Aerospace Corporation Model GV and GV–SP airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of two independent types of failure of the fuel boost pump with overheat damage found on the internal components and external housing on one of the failure types, and fuel leakage on the other. We are issuing this AD to prevent fuel leakage in combination with a capacitor clearance issue, which could result in an uncontrolled fire in the wheel well.

(f) Compliance

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

(g) Retained Inspection To Determine the Part Number With Revised Service Information

This paragraph restates the actions required by paragraph (g) of AD 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013), with revised service information. Within 36 months after January 7, 2014 (the effective date of AD 2013–22–19), inspect the fuel boost pumps to determine whether Gulfstream part number (P/N) 1159SCP500–5 is installed, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD; including Triumph Aerostructures Service Bulletin SB–TAGV/GVSP–28–JG0162, dated August 30, 2011; and GE Service Bulletin 31760–28–100, dated February 15, 2011. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the fuel boost pumps can be conclusively determined from that review.

(1) For Model GV airplanes: Gulfstream V Customer Bulletin 197, dated April 11, 2012.

(2) For Model GV–SP airplanes designated as G500: Gulfstream G500 Customer Bulletin 122, dated April 11, 2012; or Gulfstream G550 Customer Bulletin 122, dated April 11, 2012.

(3) For Model GV–SP airplanes designated as G550: Gulfstream G550 Customer Bulletin 122, dated April 11, 2012.

(h) Retained Replacement With Revised Service Information

This paragraph restates the actions required by paragraph (h) of AD 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013), with revised service information. If the inspection required by paragraph (g) of this AD reveals a fuel boost pump with Gulfstream P/N 1159SCP500–5: Within 36 months after January 7, 2014 (the effective date of AD 2013–22–19), replace the fuel boost pump with a serviceable pump having Gulfstream P/N 1159SCP500–7, in accordance with the applicable service information identified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD; including Triumph Aerostructures Service Bulletin SB–TAGV/GVSP–28–JG0162, dated August 30, 2011; and GE Service Bulletin 31760–28–100, dated February 15, 2011.

(1) For Model GV airplanes: Gulfstream V Customer Bulletin 197, dated April 11, 2012.

(2) For Model GV–SP airplanes designated as G500: Gulfstream G500 Customer Bulletin 122, dated April 11, 2012; or Gulfstream G550 Customer Bulletin 122, dated April 11, 2012.

(3) For Model GV–SP airplanes designated as G550: Gulfstream G550 Customer Bulletin 122, dated April 11, 2012.

(i) New Revision of the Maintenance or Inspection Program

Within 500 flight hours after the effective date of this AD, revise the airplane maintenance or inspection program, as applicable, to include the fuel leak check inspection of the fuel boost pumps specified in the applicable task identified in paragraph (j) of this AD.

(1) For airplanes on which fuel boost pump Gulfstream P/N 1159SCP500–5 has been replaced in accordance with paragraph (h) of this AD: The initial compliance time for the leak check inspection specified in the applicable task identified in paragraph (j) of this AD, is within 500 flight hours after doing the replacement specified in paragraph (h) of this AD.

(2) For airplanes on which the inspection required by paragraph (g) of this AD reveals that a fuel boost pump with Gulfstream P/N 1159SCP500–7 has been installed: After revising the airplane maintenance or inspection program, as applicable, as required by paragraph (i) of this AD, the initial compliance time for the leak check inspection specified in the applicable task identified in paragraph (j) of this AD, is within 500 flight hours after doing the inspection required by paragraph (g) of this AD.

(j) Service Information for Maintenance Program Revision

Use the applicable service information specified in paragraph (j)(1), (j)(2), or (j)(3) of this AD to revise the airplane maintenance or inspection program, as applicable, as required by paragraph (i) of this AD.

(1) For Model GV airplanes: Use table 18, ''500 Flight Hours Scheduled Inspection Table,'' in section 05–20–00, of chapter 5, Time Limits/Maintenance Checks; and task 28–26–01, Fuel Boost Pumps—Fuel Leak Check, of chapter 28, Fuel; of the Gulfstream V Maintenance Manual, Revision 42, dated June 20, 2013.

(2) For Model GV–SP airplanes designated as G500: Use task 28–26–01, Fuel Boost Pumps—Fuel Leak Checks, in table 20, ''500 Flight Hours Scheduled Inspection Table,'' in section 05–20–00, of chapter 5, Time Limits/Maintenance Checks; and task 28–26–01, Fuel Boost Pumps—Fuel Leak Check, of section 26, Fuel Boost Pumps, of chapter 28, Fuel; of the Gulfstream G500 Maintenance Manual, Revision 23, dated June 20, 2013.

(3) For Model GV–SP airplanes designated as G550: Use task 28–26–01, Fuel Boost Pumps—Fuel Leak Check, in table 20, ''500 Flight Hours Scheduled Inspection Table,'' in section 05–20–00, of chapter 5, Time Limits/Maintenance Checks; and task 28–26–01, Fuel Boost Pumps—Fuel Leak Check, of section 26, Fuel Boost Pumps, of chapter 28, Fuel; of the Gulfstream G550 Maintenance Manual, Revision 23, dated June 20, 2013.

(k) No Alternative Actions or Intervals

After accomplishing the revision required by paragraph (i) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance in accordance with the procedures specified in paragraph (m) of this AD.

(l) Parts Installation Prohibition

As of January 7, 2014 (the effective date of AD 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013)), no person may install a fuel boost pump having Gulfstream P/N 1159SCP500–5 on any airplane.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta 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 (n)(1) 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.

(3) AMOCs approved for AD 2013–22–19, Amendment 39–17651 (78 FR 72554, December 3, 2013), are approved as AMOCs for the corresponding provisions of this AD.

(4) If the service information contains steps that are labeled as RC (Required for Compliance), those steps must be done to comply with this AD; any steps that are not labeled as RC are recommended. Those steps that are not labeled as RC may be deviated from, done as part of other actions, or done using accepted methods different from those identified in the specified service information without obtaining approval of an AMOC, provided the steps labeled as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps labeled as RC require approval of an AMOC.

(n) Related Information

(1) For more information about this AD, contact Darby Mirocha, Continued Operational Safety and Certificate Management, 102A, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5573; fax: 404–474–5606; email: *darby.mirocha@faa.gov.*

(2) For Gulfstream, Triumph Aerostructures, and General Electric (GE) Aviation service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* 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 September 20, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–23374 Filed 9–30–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 762

[Docket No. 140905755–4755–01]

RIN 0694–AG30

Request for Public Comment on the Recordkeeping Requirements of the Export Administration Regulations

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Bureau of Industry and Security (BIS) is seeking public comment on the recordkeeping requirements of the Export Administration Regulations (EAR). BIS is reviewing its requirements on record retention and record creation and is considering proposing revisions to such requirements. BIS seeks public comment on ways to improve the recordkeeping requirements of the EAR to reduce unnecessary burden, increase clarity, address changes in technology and data management, and maintain the tools necessary for compliance with and enforcement of the EAR. This advance notice of proposed rulemaking is part of BIS's retrospective regulatory review being undertaken pursuant to Executive Order 13563.

DATES: Comments must be received by December 1, 2014.

ADDRESSES: Comments may be submitted to the Federal rulemaking portal (*http://www.regulations.gov*). The regulations.gov ID for this notice of inquiry is: BIS–2014–0035. Comments may also be submitted via email to *publiccommments@bis.doc.gov* or on paper to Regulatory Policy Division, Bureau of Industry and Security, Room 2099B, U.S. Department of Commerce, Washington, DC 20230. Please refer to RIN 0694–AG30 in all comments and in the subject line of email comments. All comments (including any personally identifying information) will be made available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Steven Emme, Office of the Assistant Secretary for Export Administration, 202–482–5491, *steven.emme@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On August 5, 2011, the Bureau of Industry and Security (BIS) published a notice of inquiry in the **Federal Register** (76 FR 47527) seeking comments pertaining to a retrospective regulatory review being conducted by BIS pursuant to Executive Order 13563, which President Barack Obama issued to improve regulation and regulatory review. Among other things, the President stressed the need for the regulatory system to allow for public participation and an open exchange of ideas, as well as promote predictability and reduce uncertainty. The President also emphasized that regulations must be accessible, consistent, written in plain language, and easy to understand. Through its notice of inquiry on this retrospective regulatory review, BIS sought comments on aspects of the Export Administration Regulations (EAR) that are not immediately affected by the Export Control Reform (ECR) initiative and that could improve clarity in the EAR or streamline requirements to improve efficiency and reduce burden.

Consistent with that notice of inquiry, this advance notice of proposed rulemaking seeks public comment on BIS's recordkeeping requirements. The recordkeeping requirements are primarily in part 762 of the EAR and apply to both the export control provisions and antiboycott provisions of the EAR. Part 762 describes, *inter alia,* those transactions and persons subject to recordkeeping requirements in § 762.1, as well as those records required to be maintained in § 762.2 for the duration described in § 762.6. While most recordkeeping requirements pertain to documents that are created for purposes other than retention (e.g., to obtain an export license or to file Electronic Export Information), some provisions of the EAR require the creation of a document solely for record retention purposes. Section 762.2 refers to those sections of the EAR that either require the creation of a record or otherwise reference recordkeeping requirements. Additionally, part 762 describes requirements on maintaining original records or reproductions, as well as producing records for inspection.

The recordkeeping provisions have not been comprehensively reviewed since part 762 became effective in 1996. While BIS previously updated part 762 to take into account electronic submissions of license applications and other requests under the SNAP–R system, BIS has not reviewed the recordkeeping requirements to take into account changes in data management systems and record retention practices since that time. In addition, BIS has not comprehensively analyzed part 762 and compared it to the recordkeeping requirements of similar regulations, such as the International Traffic in Arms Regulations (ITAR) administered by the Department of State. Under ECR, BIS has been working with the Department of State to harmonize key terms where possible. The structure and form of the EAR recordkeeping requirements vary greatly from the structure and form of the ITAR recordkeeping requirements, as only one section in the ITAR (22 CFR 122.5) describes the required retention of records. While this advance notice of proposed rulemaking is not part of ECR, BIS will take into account the provisions of the ITAR if beneficial to the EAR.

Request for Public Comments

BIS is considering proposing revisions to the recordkeeping requirements of the EAR to more effectively describe those records and persons subject to the

requirements while attempting to reduce burden, improve clarity, take into account current data management processes, and maintain the necessary tools for effective compliance and enforcement. In order to propose such revisions, BIS seeks public comment on all aspects of its recordkeeping requirements. BIS would like to receive public comments that are as specific and well-supported as possible. Helpful comments will include a description of a problem or concern, available data on cost or economic impact, and a proposed solution. BIS also welcomes comments on aspects of the current recordkeeping provisions that are considered effective or well designed. In particular, BIS invites the public to submit comments on the following issues:

(1) How have the current recordkeeping requirements of the EAR positively or negatively affected organizations? Quantitative analyses on this topic would be beneficial.

(2) Are there any recordkeeping provisions or references to documents that are out of date? Are there provisions in the recordkeeping requirements that should be updated to take into account technological changes in how business is conducted and records are maintained?

(3) Should the recordkeeping provisions make transactional distinctions on when records should be created or maintained? For instance, should intangible transfers of technology or software be treated differently than tangible exports or reexports for record creation and record retention purposes? Or would it be preferable to avoid making distinctions in order to have more clear and concise requirements?

(4) Would be efficient to make a distinction in Part 762 between provisions that require the *maintenance* of records created in the ordinary course of business as opposed to those that require the *creation* of records for export control purposes that would not otherwise be created in the ordinary course of business?

(5) Are there any record creation requirements in the EAR that should be reviewed or revised?

(6) Are there any recordkeeping requirements under U.S. or other law that would serve as good examples for the EAR?

Comments should be submitted to BIS as described in the **ADDRESSES** section of this notice of inquiry by December 1, 2014. BIS will consider all comments submitted in response to this advance notice of proposed rulemaking that are received before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. BIS will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting the comments and will not consider them. All public comments in response to this advance notice of proposed rulemaking must be in writing and will be a matter of public record, and will be available for public inspection and copying on the BIS Freedom of Information Act (FOIA) Reading Room at *http://efoia.bis.doc.gov/index.php/electronic-foia/index-of-documents.*

Dated: September 25, 2014.

Kevin J. Wolf,

Assistant Secretary of Commerce for Export Administration.

[FR Doc. 2014–23372 Filed 9–30–14; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7 and 75

[Docket No. MSHA–2013–0033]

RIN 1219–AB79

Refuge Alternatives for Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for information; extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the comment period on the Agency's Request for Information (RFI) on Refuge Alternatives for Underground Coal Mines to give interested parties additional time to review research reports from the National Institute for Occupational Safety and Health (NIOSH) and other relevant information and provide substantive comments.

DATES: The comment period for the RFI published on August 8, 2013 (78 FR 48593), last extended on June 3, 2014 (79 FR 31895), has been further extended. Comments must be received or postmarked by midnight Eastern Daylight Saving Time on April 2, 2015.

ADDRESSES: Submit comments and informational materials, identified by RIN 1219–AB79 or Docket No. MSHA–2013–0033, by one of the following methods:

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: zzMSHA-comments@dol.gov.* Include RIN 1219–AB79 or Docket No. MSHA–2013–0033 in the subject line of the message.
- *Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939.
- *Fax:* 202–693–9441.
- *Hand Delivery or Courier:* MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 21st floor.

Instructions: All submissions must include RIN 1219–AB79 or Docket No. MSHA–2013–0033. Do not include personal information that you do not want publicly disclosed; MSHA will post all comments without change to *http://www.regulations.gov* and *http://www.msha.gov/currentcomments.asp,* including any personal information provided.

Docket: For access to the docket to read comments received, go to *http://www.regulations.gov or http://www.msha.gov/currentcomments.asp.* To read background documents, go to *http://www.regulations.gov.* Review the docket in person at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal Holidays. Sign in at the receptionist's desk on the 21st floor.

Email Notification: To subscribe to receive an email notification when MSHA publishes rules in the **Federal Register**, and program information, instructions, and policy, go to *http://www.msha.gov/subscriptions/subscribe.aspx.*

FOR FURTHER INFORMATION CONTACT: Sheila A. McConnell, Acting Director, MSHA, Office of Standards, Regulations, and Variances, at *McConnell.Sheila.A@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On August 8, 2013 (78 FR 48593), MSHA published an RFI on Refuge Alternatives for Underground Coal Mines. The comment period was scheduled to close on October 2, 2014 (79 FR 31895), after three extensions. In response to requests, MSHA is extending the comment period to April 2, 2015, to allow interested parties additional time to review recent studies from the

National Institute for Occupational Safety and Health and other information that bear on issues raised in the RFI.

Authority: 30 U.S.C. 811.

Dated: September 25, 2014.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2014–23301 Filed 9–30–14; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 86

[Docket ID: DOD–2013–OS–0009]

RIN 0790–AJ19

Background Checks on Individuals in DoD Child Care Services Programs

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Proposed rule.

SUMMARY: This rule establishes and updates policy, assigns responsibilities, and provides procedures to conduct criminal history checks on individuals involved in the provision of child care services for children under the age of 18 in DoD programs. *Public Law 101–647, also known as the Crime Control Act of 1990 (Act),* requires all individuals involved with the provision of child care services to children under the age of 18 undergo a criminal background check. ''Child care services'' include, but are not limited to, social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), and rehabilitative programs. Any conviction for a sex crime, an offense involving a child victim, or a drug felony, may be grounds for denying employment or for dismissal of an employee providing any of the services discussed above

DATES: Comments must be received by December 1, 2014.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Karen Morgan, 571–372–0859

SUPPLEMENTARY INFORMATION:

Executive Summary

The purpose of this regulatory action is to describe requirements for criminal history background checks, including reinvestigation, and self-reporting, for individuals involved with the provision of child care services.

The legal authorities for this rule include: 5 U.S.C. 2105, 10 U.S.C. chapter 47, 42 U.S.C. 13041.

The major provisions of this regulatory action include providing procedures for requirements for criminal history background checks listing the types of background checks, and descriptions of reinvestigation and self-reporting.

This rule is intended to support the workforce mission of the DoD and implement current law that covers individuals expected to have regular contact with children in the performance of child care services on a DoD installation or DoD-sanctioned program. The estimated costs of the proposed rule are $10 million annually. This cost includes administration costs; required FBI fingerprint Investigations Child Care National Agency Check with Inquiries checks ($125/NACI); State Criminal History Repository checks ($25/each state the individual resided in); and periodic reinvestigations. We do not believe that this rule will impose substantial direct costs on state and local governments.

Regulatory Analysis

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 13563 and 12866 direct agencies to assess 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, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined to be a significant regulatory action, although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

DoD has reviewed the rule in accordance with the Unfunded Mandates Reform Act of 1995, and compliance with the rule would require no additional expenditures by either public or private employers. In sum, the final rule does not mandate that State, local, and tribal governments adopt new, unfunded regulatory obligations. The costs of the investigations conducted pursuant to this rule are borne by the DoD, and not by the individual or his or her employer.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

We certify this rule would not have a significant economic impact on a substantial number of small entities because the costs for the investigation conducted pursuant to this rule are borne by the DoD, and not by the individual or his or her employer. Furthermore, any indirect costs incurred by small businesses as a result of this rule would be minimal. Accordingly, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This rule imposes reporting and record keeping requirements under the Paperwork Reduction Act of 1995. These requirements have been approved by the Office of Management and Budget and assigned OMB Control Number 3206–0005, ''Questionnaires for National Security Positions, Standard Form 86 (SF 86),'' OMB Control Number 3206–0261, ''SF 85 Questionnaire for Non-Sensitive Positions,'' OMB Control Number 3206–0191, ''SF 85P Questionnaire for Public Trust Positions,'' and OMB Control Number 0704–0516, ''Child Care Development Program (CDP) Criminal History.''

Executive Order 13132, ''Federalism''

This rulemaking was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). It has been determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. This rulemaking has no substantial effect on

the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Nothing in this document preempts any State law or regulation. Therefore, DoD did not consult with State and local officials because it was not necessary. Show citation box

List of Subjects in 32 CFR Part 86

Government contracts, Government employees, Infants and children, and Investigations.

Accordingly, 32 CFR part 86 is proposed to be revised to read as follows:

PART 86—BACKGROUND CHECKS ON INDIVIDUALS IN DOD CHILD CARE SERVICES PROGRAMS

Secs.
86.1 Purpose.
86.2 Applicability.
86.3 Definitions.
86.4 Policy.
86.5 Responsibilities.
86.6 Procedures.

Authority: 5 U.S.C. 2105, 10 U.S.C. chapter 47, and 42 U.S.C. 13041.

§ 86.1 Purpose.

This part establishes policy, assigns responsibilities, and provides procedures to conduct criminal history checks on individuals involved in the provision of child care services for children under the age of 18 in DoD programs.

§ 86.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this part as the ''DoD Components'').

§ 86.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purposes of this part.

Adjudication. The evaluation of pertinent data in a background investigation, as well as any other available information that is relevant and reliable, to determine whether an individual is suitable for work.

Adult. An individual 18 years of age or older regarded in the eyes of the law as being able to manage his or her own affairs.

Applicant. A person upon whom a criminal history background check is, will be, or has been conducted, including individuals who have been selected or are being considered for a position subject to a criminal history background check, and individuals undergoing a recurring criminal history background check. Includes current employees.

Child. A person under 18 years of age.

Care provider. Current or prospective individuals hired with appropriated fund (APF) and nonappropriated fund (NAFs) for education, treatment or healthcare, child care or youth activities; individuals employed under contract who work with children; and those who are certified for care. Individuals working within programs that include: Child Development Programs, DoD dependents schools, DoD-operated or -sponsored activities, foster care, private organizations on DoD installations, and youth programs.

Child care services. Care or services provided to children under the age of 18 in settings including child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services, as defined in 42 U.S.C. 13041

Class. With regard to the designation of positions, a categorical descriptor identifying employee, contractor, provider, or volunteer positions by group rather than by individual position or title (e.g., ''doctors'' or ''individuals supervising children in a school'').

Contractor. Any individual, firm, corporation, partnership, association, or other legal non-Federal entity that enters into a contract directly with DoD or a DoD Component to furnish supplies, services, or both including construction. Subcontractors are excluded. Foreign governments or representatives of foreign governments that are engaged in selling to DoD or a DoD Component are defense contractors when acting in that context. A subcontractor is any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor

Covered position. Defined in volume 731 of DoD Instruction 1400.25, ''DoD Civilian Personnel Management System'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/140025v731.pdf*). *Criminal history background checks.* A review of records, investigative reports, and other investigative elements to generate criminal history background findings to be used to make fitness or suitability determinations.

Derogatory information. Information that may reasonably justify an unfavorable personnel suitability or fitness determination because of the nexus between the issue or conduct and the core duties of the position.

DoD affiliation. A prior or current association, relationship, or involvement with the DoD or any elements of DoD, including the Military Departments.

DoD-sanctioned programs. Any program, facility, or service funded, operated, or officially sanctioned by the DoD, a Military Department or Service, or any agency, unit, or subdivision thereof. Examples include, but are not limited to, chapel programs, child development centers, family child care (FCC) programs, medical treatment facilities, Department of Defense Education Activity (DoDEA) schools, recreation and youth programs. These do not include programs operated by other State or federal government agencies or private organizations without the official sanction of a DoD entity.

Duties. Those activities performed as an employee, contractor, provider, or volunteer that involve interaction with children, including any work performed in a child development program or DoDEA school.

Employee. An individual, paid from funds appropriated by the Congress of the United States, or an individual employed by a NAF instrumentality in accordance with 5 U.S.C. 2105(c). Includes foreign nationals in accordance with Volume 1231 of DoD Instruction 1400.25, ''DoD Civilian Personnel Management System'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/1400.25-V1231.pdf*), Military Service members working during their off-duty hours, and non-status, non-continuing temporary positions with specified employment periods not to exceed 1 year such as summer hires, student interns, and seasonal hires.

FAP. Defined in DoD Directive 6400.1, ''Family Advocacy Program (FAP)'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/640001p.pdf*).

FAP records check. A review of FAP records maintained on an individual, including records maintained by the installation office and records in the Service Child and Spouse Abuse Central Registry in accordance with DoD Directive 6400.1. If the individual is the spouse or dependent of a Service member, this may entail review of records maintained on the sponsoring Service member. Installation and Service Central Registry checks are

limited to identifying pending and met criteria incidents of maltreatment and do not include information related to incidents that did not meet criteria or any information contained in the clinical case record that is protected by section 1320d–6 or 5 U.S.C. 552a

Federal Bureau of Investigation (FBI) criminal history background check. An FBI identification record—often referred to as a criminal history record or a ''rapsheet''—is a listing of certain information taken from fingerprint submissions retained by the FBI in connection with arrests and, in some instances, federal employment, naturalization, or military service. The process of responding to an identification record request is generally known as a criminal history background check.

FCC. Defined in DoD Instruction 6060.2, ''Child Development Programs (CDPs)'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/606002p.pdf*).

FCC provider. Defined in DoD Instruction 6060.2.

FCC adult family members. Any adult, 18 years of age or older, who resides in the home of an FCC provider for 30 or more consecutive days.

Fitness. The reference to a person's level of character and conduct determined necessary for an individual to perform work for, or on behalf of, a Federal Agency as an employee in the excepted service (other than in a position subject to suitability) or as a contractor employee.

Fitness determination. A decision, based on review of criminal history background check findings, that an individual is fit to perform duties in a position subject to criminal history background check. Fitness determinations will be ''favorable,'' meaning that the individual is fit to perform the duties, or ''unfavorable,'' meaning that the individual is not.

Foreign nationals. Individuals who are not citizens of the United States.

Foster care providers. A voluntary or court-mandated program that provides 24-hour care and supportive services in a family home or group facility, within government-owned or -leased quarters, for children and youth who cannot be properly cared for by their own family.

Healthcare personnel. Military, civilian, or contract staff involved in the delivery of healthcare services.

Host-government check. A criminal history background check conducted on foreign nationals in accordance with U.S. and host country treaties or agreements.

Interim suitability or fitness determination. Part of the pre-screening process in the identification and resolution of suitability or fitness issues, which occurs prior to the initiation of the required investigation. It involves the review of applications and other employment related documents. A favorable interim suitability or fitness determination is a status granted on a temporary basis, which permits individuals to work under line-of-sight supervision (LOSS) after the return of the advance FBI fingerprint check, pending completion of full investigative requirements and a final suitability determination.

Investigative elements. The records, reports, or other individual elements that comprise the whole of information collected during a criminal history background check and used to make a fitness or suitability determination.

Installations records check (IRC). A query of records maintained on an individual by programs and entities at the military installation where the individual lives, is assigned, or works, including military law enforcement and installation security records, drug and alcohol records, and FAP records for a minimum of 2 years before the date of the application.

Investigative service provider (ISP). The company or agency authorized to perform background investigations on personnel on behalf of the agency.

Line of Sight Supervision (LOSS). Continuous visual observation and supervision of an individual whose background check has not yet cleared, and has a favorable interim suitability or fitness determination, while engaged in child interactive duties, or in the presence of children in a DoD sanctioned program or activity. The person providing supervision must have undergone a background check and received a final favorable suitability or fitness determination and be current on all periodic reinvestigations as required by this part.

Met criteria. Reported incident of alleged maltreatment found to meet DoD incident determination criteria for child abuse or domestic abuse and entry into the Service FAP central registry of child abuse and domestic abuse reports.

Position. An employee, contractor, provider, or volunteer role or function.

Preliminary investigations. Those investigative elements of a criminal history background check, including those specified in § 86.6(f) of this part, which must be favorably completed and reviewed before an individual may be permitted to perform duties under LOSS.

Providers. Individuals involved in child care services who have regular contact with children or may be alone with children in the performance of their duties. Includes FCC providers and individuals with overall management responsibility for child and youth programs.

Regular contact with children. Recurring and more than incidental contact with or access to children in the performance of their duties on a DoD installation, program, or as part of a DoD-sanctioned activity.

Reinvestigation. A criminal history background check conducted after the period of time prescribed by this part to ensure the individual remains eligible to provide child care services. Reinvestigation includes the same checks conducted for the initial investigation as outlined in paragraph (b) of § 86.6.

Respite care providers. Individuals who provide short-term care and supportive services in a family home or group facility within government-owned or -leased quarters.

State criminal history repository (SCHR). A repository of criminal information that lists past state convictions, current offender information, and criminal identification information (fingerprints, photographs, and other information or descriptions) that identify a person as having been the subject of a criminal arrest or prosecution. Checks of the SCHR may include the State child abuse and neglect repository and the State sex offender registry.

Suitability determination. A decision that a person is or is not suitable for a covered position within the DoD.

Supervisor. The person supervising individuals who are permitted to perform duties only under LOSS, who is not necessarily the same as an employee's supervisor for employment purposes (e.g., ratings, assignment of duties).

Volunteer. There are two types of volunteers:

(1) *Specified volunteers.* Individuals who could have extensive or frequent contact with children over a period of time. They include, but are not limited to, positions involving extensive interaction alone, extended travel, or overnight activities with children or youth. Coaches and long-term instructors are among those who fall in this category. Specified volunteers are designated by the DoD Component head. Background checks are required in accordance with paragraph (b)(4) of § 86.6.

(2) *Non-specified volunteers.* Individuals who provide services that are shorter in duration than is required to perform a criminal history background check (e.g., one-day class

trip, class party). Because non-specified volunteers do not receive the same level of background checks as specified volunteer, non-specified volunteers must always be in line of sight of a staff member with a complete background check.

Youth program. Defined in DoD Instruction 6060.4, ''Department of Defense (DoD) Youth Programs (YPs)'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/606004p.pdf*).

§ 86.4 Policy.

It is DoD policy that:

(a) Individuals who have regular contact with children under 18 years of age in DoD-sanctioned child care services programs will undergo a criminal history background check.

(b) DoD Component heads are delegated the authority to make suitability determinations and take subsequent actions in cases involving applicants and appointees to covered positions as defined by 5 CFR 731.101, subject to the conditions in 5 CFR 731.103. This authority may be further delegated to authorized management officials, in writing, in accordance with volume 731 of DoD Instruction 1400.25.

(1) The DoD Consolidated Adjudications Facility is responsible for making favorable suitability determinations for civilian personnel in accordance with Deputy Assistant Secretary of Defense for Civilian Personnel and Policy Memorandum, ''Responsibilities Under the Department of Defense Suitability and Fitness Adjudications for Civilians Employees Programs,'' August 26, 2013.

(2) Military members are not subject to suitability adjudication under Volume 731 of DoD Instruction 1400.25, ''DoD Civilian Personnel Management System'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/140025v731.pdf*). Military members are subject to the background check requirements of DoD Instruction 5200.02, ''Personnel Security Program'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/520002_2014.pdf*) and § 86.6.

(c) All individuals who have a current or prior DoD affiliation must also undergo an IRC.

(d) Suitability and fitness determinations for individuals subject to this part will follow the guidance of Volume 731 of DoD Instruction 1400.25 for APF employees and Subchapter 1403 of DoD Instruction 1400.25 for NAF employees. Suitability and fitness are to be applied for the child care worker population in accordance with Volume 731 of DoD Instruction 1400.25 for appropriated fund employees in covered positions as defined by 5 CFR part 731.

(e) Individuals who have received a favorable interim suitability or fitness determination based on the FBI criminal history background check are permitted to work under LOSS pursuant to 42 U.S.C. 13041(b)(3).

§ 86.5 Responsibilities.

(a) Under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), the Assistant Secretary of Defense for Readiness and Force Management (ASD(R&FM)):

(1) Ensures the conduct of criminal history background checks complies with DoD policy and the Criminal Justice Information Services Division of the FBI's operational and security policies and procedures.

(2) Monitors DoD Component compliance with this part, applicable laws, and subsequent guidance issued by the applicable ISP.

(b) Under the authority, direction, and control of the ASD(R&FM), the Deputy Assistant Secretary of Defense for Civilian Personnel Policy (DASD(CPP)) oversees development of DoD Component policies and procedures for the background check initiation, completion, adjudication, and suitability or fitness determination process for civilian employees in accordance with this part.

(c) Under the authority, direction, and control of the ASD(R&FM), the Deputy Assistant Secretary of Defense for Military Community and Family Policy (DASD(MC&FP)) oversees development of DoD Component policies and procedures related to the background check initiation, completion, adjudication, and fitness determination process for specified volunteers, FCC providers and adults residing in their home, and others as identified in accordance with this part.

(d) Under the authority, direction, and control of the ASD(R&FM), the Deputy Assistant Secretary of Defense for Military Personnel Policy (DASD(MPP)):

(1) Implements this part for the individuals identified in paragraph (a)(6)(v) of § 86.6.

(2) Institutes effective quality assurance and quality control systems for chaplains, support staff, specified volunteers, and contractors who provide support to religious programs and activities identified in paragraph (a)(6)(v) of § 86.6 and in accordance with this part.

(e) The Director of Administration under the authority, direction, and control of the Deputy Chief Management Officer (DCMO) of the Department of Defense, the Director of Administration ensures that the adjudication of background investigations of individuals who have regular contact with children under 18 years of age in DoD-sanctioned programs considers the criteria for presumptive and automatic disqualification as specified in this part.

(f) The Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) establishes policies and procedures for the background check initiation, completion, adjudication, and fitness determination process for contractors in accordance with the requirements of this part.

(g) The DoD Component heads:

(1) Ensure Component compliance with the requirements of this part, applicable laws, and guidance for civilian employees.

(2) Ensure compliance with suitability and fitness determination policies, requirements, and procedures for individuals in child care services in DoD programs as defined in 42 U.S.C. 13041 and DoD Instruction 1400.25.

(3) Ensure compliance with policies, requirements, and procedures for LOSS of individuals with a favorable interim suitability determination.

(4) Provide support and resources as required to implement this part and any Component-specific policies, requirements, and procedures, and ensure implementation.

§ 86.6 Procedures.

(a) *Requirements for Criminal History Background Checks.*

(1) All criminal history background checks required by this part must be initiated and overseen by properly trained and vetted individuals who have been determined to be responsible for personnel security pursuant to DoD 5200.2–R or human resource functions pursuant to Volume 731 of DoD Instruction 1400.25. Program managers, supervisors, and others not routinely performing personnel security and human resource functions are prohibited from managing the criminal history checks.

(2) All employment applications completed by individuals subject to this part must comply with the requirements of 42 U.S.C. 13041(d).

(3) The DoD Component will ensure that only authorized ISPs are used.

(4) When permitted by the host government, foreign government checks of individuals serving on DoD installations overseas must be requested directly by the employing Military Service or agency in accordance with Volume 1231 of DoD Instruction 1400.25. As an alternative, DoD Components may request that overseas

Military Service investigative elements obtain appropriate host-government checks and accept such checks if they are comparable to those required by 42 U.S.C. 13041. Where it is not possible to obtain criminal history checks comparable to those required by 42 U.S.C. 13041, foreign nationals will not be eligible for employment in child care services.

(5) Individuals subject to criminal history background checks are:

(i) All personnel employed or performing duties in DoD Child and Youth or other sanctioned child care services program.

(ii) Individuals providing in-home FCC.

(iii) Personnel employed or performing duties in child and youth recreational and athletic programs (e.g., Morale, Welfare, and Recreation), including instructors and, when working in a facility when children and youth are present, custodial personnel.

(iv) Individuals employed or performing duties in a DoDEA school (whether or not directly involved with teaching), including but not limited to teachers, administrators, other professional staff, aides, bus drivers, janitors, cafeteria workers, nurses, and attendants.

(v) Chaplains, chaplains' assistants, religious program specialists, and other individuals employed or performing child care services duties for children under 18 years of age on a DoD installation or as part of a military-sanctioned program.

(vi) Foster and respite child care providers on a DoD installation, program, or as part of a military-sanctioned activity.

(vii) Health and mental health care personnel, employed or performing child care services duties on a DoD installation, in a DoD sanctioned program, or as part of a military-sanctioned activity, including but not limited to physicians, dentists, nurse practitioners, clinical social workers, physical therapists, speech-language pathologists, clinical support staff (including residents), registered nurses, licensed practical nurses, nursing assistants, play therapists, and technicians.

(viii) Individuals employed or performing child care duties in social services, residential care, rehabilitation programs, detention, and correctional services on a DoD installation, program, or as part of a military-sanctioned activity.

(ix) Any other individuals reasonably expected to have regular contact with children on a DoD installation, in a DoD sanctioned program, or as part of a military-sanctioned activity, including specified volunteers and any person 18 years of age or older residing in an FCC, foster, or respite care home.

(6) The DoD Components will also determine any other classes of positions subject to criminal history background checks, taking care to ensure that all individuals who have regular contact with children when providing child care services are investigated and the requirement must pertain to the class as a whole.

(7) Individuals designated in non-specified volunteer positions must always be under direct LOSS in accordance with § 86.6(f).

(b) *Types of Background Checks.* Procedures for conducting a background check on individuals in paragraphs (a)(6)(i) through (a)(6)(ix) of this section differ based on the employment status of the individual. Military members are subject to the background check requirements of DoD Instruction 5200.02 and this section. The FBI criminal history background checks for all categories of individuals must be fingerprint-based and fingerprints must be captured using an FBI-approved system. SCHR checks may require hardcopy fingerprint submissions. State checks must include the state child abuse and neglect repository and the state sex offender registry. The Component must request a check of the state child abuse and neglect repository and the State sex offender registry if they are not automatically checked as part of the standard SCHR check.

(1) *Criminal History Background Checks for DoD Civilian and Military Personnel who are Investigated at the NACI or a Higher Level pursuant to DoD's Personnel Security Program.*

(i) DoD civilian and military personnel required by DoD Instruction 5200.02 to be investigated according to the requirements of the NACI or a higher level investigation and who have regular contact with children under 18 years of age in DoD-sanctioned programs will be investigated and adjudicated in accordance with the provisions of DoD Instruction 5200.02.

(ii) These personnel will also be subject to the additional requirements of the Child Care National Agency Check and Inquiries (CNACI) and the criteria for presumptive and automatic disqualification as specified in paragraph (c) of this section.

(2) *Criminal History Background Checks for Civilian Employees (APF and NAF).*

(i) In accordance with 42 U.S.C. 13041 and Volume 731 and Subchapter 1403 of DoD Instruction 1400.25, complete a CNACI, which includes an FBI criminal history background check conducted through the Criminal Justice Information Services Division of the FBI and SCHR checks through State repositories of all States that an employee or prospective employee lists as current and former residences on an employment application. Results of an advanced FBI fingerprint check must be provided before completion of the full CNACI to determine employment under LOSS.

(iii) Evidence or documentation of the individual's past or present dependency on or addiction to any controlled or psychoactive substances, narcotics, cannabis, or other dangerous drug without evidence of substantial rehabilitation.

(iv) A conviction, including any general, special, or summary court-martial conviction, or non-judicial punishment under Article 15 of the UCMJ for:

(A) A crime of violence committed against an adult.

(B) Illegal or improper use, possession, or addiction to any controlled or psychoactive substances, narcotics, cannabis, or other dangerous drug.

(v) A civil adjudication that terminated the individual's parental rights to his or her child, except in cases where the birth parent places his or her child for adoption.

(2) *Evaluation of Presumptively Disqualifying Information.* The DoD Components will establish and oversee procedures for the evaluation of presumptively disqualifying information for all categories of individuals in paragraph (b) of this section. Evaluation of presumptively disqualifying information for APF and NAF personnel must be in accordance with Volume 731 and Subchapter 1403 of DoD Instruction 1400.25, respectively.

(3) *Criteria for Disqualification Under LOSS.* If an investigation of an individual who is currently working under LOSS subsequently results in an unfavorable determination, the DoD Components will take action to protect children by reassigning or removing the individual from employment, contract, or volunteer status.

(4) *Disputes and Appeals.* The DoD Components will establish and oversee procedures for the communication of determinations and the appeal of unfavorable determinations for all categories of individuals in paragraph (b) of this section. The procedures for civilian personnel are subject to Volume 731 of DoD Instruction 1400.25 for APF employees and Subchapter 1403 of DoD Instruction 1400.25 for NAF employees.

(d) *Reinvestigation.*

(1) All DoD civilian employees (both APF and NAF), contractors, military personnel, and any other individuals reasonably expected to have regular contact with children on a DoD installation, program, or as part of a military-sanctioned activity, including specified volunteers and any person 18 years of age or older residing in an FCC, foster, or respite care home, who continue to perform duties in the position for which their initial background check was conducted, must undergo a reinvestigation every 5 years. The reinvestigation must consist of a check at the same level as the initial investigation as outlined in paragraph (b) of this section.

(2) All FCC providers and adults residing in an FCC home must undergo an annual reinvestigation. The reinvestigation must consist of the same check conducted for the initial investigation as outlined in paragraph (b) of this section.

(3) If the reinvestigation results in an unfavorable determination, the DoD Components will take action to protect children by reassigning or removing the individual from employment, contract, or volunteer status.

(4) If derogatory information surfaces within the 5 years before the reinvestigation, the DoD Component will take action to protect children by reassigning or suspending the individual from having contact with children, any individual, contractor or volunteer until the case is resolved.

(e) *Self-Reporting.*

(1) Individuals who have regular contact with children under 18 years of age in DoD-sanctioned programs who have a completed background check are required to immediately report subsequent automatic disqualification criteria under paragraph (c)(1) of this section and presumptive disqualification criteria under paragraphs (c)(2)(i), (c)(2)(iv), and (c)(2)(v) of this section.

(2) The DoD Components will establish procedures for:

(i) Informing individuals of the requirement to immediately report any incident or conviction that may invalidate their prior background check and make them ineligible to work or have contact with children.

(ii) Responding to and evaluating reports made by such individuals, and taking appropriate action until the case has been resolved or closed.

Eligibility to Perform Duties Under LOSS.

The DoD Components will establish Component-specific procedures, policies, and requirements, subject to the requirements of this section, to permit applicants for whom a criminal history background check has been initiated but not yet completed, to perform duties under LOSS upon favorable findings of preliminary investigations.

(1) *No Presumption of Right.* No individual will be permitted to perform duties under LOSS in a position subject to criminal history background check without authorizing policy or other written permission from a DoD Component head.

(2) *Preliminary Investigations Required.* No individual will be permitted to perform duties under LOSS in a position subject to criminal history background check unless the following investigative elements have been reviewed and determined favorably:

(i) An IRC, including installation law enforcement records check, drug and alcohol records, and FAP records check for a minimum of 2 years before the date of the application if the individual has a preexisting DoD affiliation.

(ii) Initial results from the advanced FBI fingerprint criminal history background check (not the full check).

(3) *Exception for Non-specified Volunteers.* Due to the controlled, limited duration of an activity for these individuals, an advanced FBI fingerprint criminal history background check is not required. Non-specified volunteers will be permitted to perform duties and services under LOSS for the duration of the activity.

(4) *Supervisor Requirements.* The supervisor must be a person who:

(i) Has undergone and successfully completed the required background check.

(ii) Has complied, as required, with the periodic reinvestigation requirement for a recurring criminal history background check.

(iii) Has not previously exhibited reckless disregard for an obligation to supervise an employee, contractor, or volunteer.

(5) *Video Surveillance.* The use of video surveillance equipment to provide temporary oversight for individuals whose required background checks have been initiated but not completed is acceptable provided it is continuously monitored by an individual who has undergone and successfully completed all required background checks. This provision shall meet the intent of a flexible and reasonable alternative for ''direct sight supervision.''

(6) *Conspicuous Identification of Individuals Subject to LOSS.* Individuals permitted to perform duties solely under LOSS must be conspicuously marked by means of distinctive clothing, badges, wristbands, or other visible and apparent markings. The purpose of such markings must be communicated to staff, customers, parents, and guardians by conspicuous posting or printed information.

(7) *Permissible Performance of Duties Without Supervision.* Individuals otherwise required to perform duties only under LOSS may perform duties without supervision if:

(i) Interaction with a child occurs in the presence of the child's parent or guardian;

(ii) Interaction with children is in a medical facility, subject to supervisory policies of the facility, and in the presence of a mandated reporter of child abuse; or

(iii) Interaction is necessary to prevent death or serious harm to the child, and supervision is impractical or unfeasible (e.g., response to a medical emergency, emergency evacuation of a child from a hazardous location).

Dated: September 24, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–23061 Filed 9–30–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0813]

RIN 1625–AA00

Safety Zone; Navy UNDET, Outer Apra Harbor and Adjacent Waters, Guam

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish safety zones for underwater detonation operations in the waters of outer Apra Harbor, Guam. This rule would be effective from 2 p.m. on November 5, 2014, until 4 p.m. on November 6, 2014 (kilo, Local Time). The enforcement period for this rule would be from 2 p.m. to 4 p.m. on November 5, 2014 and from 2 p.m. to 4 p.m. November 6, 2014. The Coast Guard believes this safety zone regulation is necessary to protect all persons and vessels that would otherwise transit or be within the affected area from possible safety hazards associated with an underwater detonation operation.

DATES: Comments and related material must be received by the Coast Guard on or before October 21, 2014.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief, Kristina Gauthier, Sector Guam, U.S. Coast Guard; (671) 355–4866, *Kristina.m.gauthier@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number USCG–2014–0813 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number USCG–2014–0813 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

B. Regulatory History and Information

There have been two previous temporary final rules for safety zones around underwater detonations by the U.S. Navy at this location in the past year. Those rules were assigned docket numbers USCG–2014–0527 and USCG–2014–0356. We learned of the need for the safety zone regulation we are proposing on 26 August 2014. We have provided a 20-day comment period for this proposed rule. If after considering comments we decide to issue a temporary final rule, we would need to make that rule effective less than 30 days after publication and would cite to good cause for doing so under 5 U.S.C. 553(d)(3).

C. Basis and Purpose

The legal basis for this rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C 1231; 33 CFR 1.05–1, 6.04–6, 160.5; and Department of Homeland Security Delegation No. 0170.1. A safety zone is a water area, shore area, or water and shore area, for which access is limited to authorized person, vehicles, or vessels for safety purposes.

The purpose of this rulemaking is to protect mariners from the potential hazards associated with a U.S. Navy training exercise which include detonation of underwater explosives. Approaching too close to such exercises could potentially expose the mariner to flying debris or other hazardous conditions.

D. Discussion of Proposed Rule

In order to protect the public from the hazards of the U.S. Navy training exercise, the Coast Guard proposes to establish a temporary safety zone regulation, effective from 2 p.m. November 5, 2014, through 4 p.m. November 6, 2014 (Kilo, Local Time). The enforcement periods for this rule would be from 2 p.m. to 4 p.m. on November 5, 2014 and from 2 p.m. to 4 p.m. on November 6, 2014.

The safety zones would be located within the Guam COTP Zone (See 33 CFR 3.70–15), and will cover all waters bounded by a circle with a 700-yard radius for vessels and a 1367 yard radius for persons in the water, centered at: 13°27′42″ N and 144°38′30″ E, from the surface of the water to the ocean floor.

The general regulations governing safety zones contained in 33 CFR 165.23 apply. Entry into, transit through or anchoring within safety zones is prohibited unless authorized by the COTP or a designated representative thereof. Any Coast Guard commissioned, warrant, or petty officer, and any other COTP representative permitted by law, may enforce the zone. The COTP may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the safety zone regulation is unnecessary or impractical

for the purpose of maritime safety. Vessels or persons violating this rule may be subject to the penalties set forth in 33 U.S.C. 1232 and/or 50 U.S.C. 192.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard expects the economic impact of this rule to be extremely minimal based on the short duration of the safety zone regulation and the limited geographic area affected by it.

2. Impact on Small Entities

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

This safety zone regulation will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit through a portion of the zones from 2 p.m. through 4 p.m. on November 5 and 6, 2014. This rule would be enforced for only 2 hours each day and vessel traffic can pass safely around the safety zones. The safety zones do not encompass the entire harbor and safe transit is still allowed to pass through, in and out of Apra Harbor. Further traffic will be allowed to pass through the zones with the permission of the Coast Guard Patrol Commander 671–487–4817. Before the effective period, we will issue maritime advisories widely available to users of outer Apra Harbor.

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

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions

Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record-keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T14–0813 to read as follows:

§ 165.T14–0813 Safety Zones; Outer Apra Harbor and adjacent waters, Guam.

(a) *Location.* The following areas, within the Guam Captain of the Port (COTP) Zone (See 33 CFR 3.70–15), from the surface of the water to the ocean floor, are safety zones:

(1) Seven-hundred-yard-radius zone. All waters bounded by a circle with a 700-yard radius centered at 13°27′42″ N and 144°38′30″ E, (NAD 1983) are included.

(2) One-thousand-three-hundred-and-sixty-seven-yard-radius zone. All waters bounded by a circle with a 1367-yard radius centered at 13°27′42″ N and 144°38′30″ E, (NAD 1983) are included.

(b) *Effective period.* This section is effective from 2 p.m. on November 5, 2014 through 4 p.m. on November 6, 2014 (Kilo, Local Time).

(c) *Enforcement periods.* The safety zones described in paragraph (a) of this section will be enforced during the U.S. Navy underwater detonation operation, from 2 p.m. until 4 p.m. on November 5, 2014, and 2 p.m. to 4 p.m. on November 6, 2014 (Kilo, Local Time).

(d) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply. No vessels may enter or transit safety zone (a)(1) and no persons in the water may enter or transit safety zone (a)(2) unless authorized by the COTP or a designated representative thereof.

(e) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other COTP representative permitted by law, may enforce these temporary safety zones.

(f) *Waiver.* The COTP may waive any of the requirements of this section for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime security.

(g) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: September 7, 2014.

Brenden J. Kettner,

Commander, U.S. Coast Guard, Captain of the Port Guam, Acting.

[FR Doc. 2014–23163 Filed 9–30–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 38

RIN 2900–AO95

Applicants for VA Memorialization Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations defining who may apply for a headstone or marker. The intended effect of this proposed rule would be to expand the types of individuals who may request headstones and markers on behalf of decedents. This amendment would address concerns that the existing applicant definition is too restrictive and results in identified veteran gravesites going unmarked.

DATES: Comments must be received on or before December 1, 2014.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to the Director, Regulation Policy and Management (02Reg), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AO95—Applicants for VA Memorialization Benefits.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Anita Hanson, Director, Memorial Programs Service (41B), National Cemetery Administration, 810 Vermont Ave. NW., Washington, DC 20420, (202) 501–3060. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The National Cemetery Administration (NCA) proposes to amend its regulations regarding applications for headstones and markers. NCA is proposing, as discussed below, to amend the definition of ''applicant,'' set forth in 38 CFR 38.632, as it pertains to individuals requesting VA headstones and markers. In 2009, VA implemented the existing definition of applicant to include the decedent's next of kin (NOK), a person authorized in writing by NOK, or a personal representative authorized in writing by the decedent. An individual who met the definition was authorized to apply for a Government-furnished headstone or marker, or a new emblem of belief for inscription on a Government-furnished headstone or marker.

VA has received a number of requests from individuals who did not meet the current definition of applicant for headstones or markers. Because of the

regulatory restriction, VA denied the requests for headstones or markers which has frustrated the efforts of individuals to ensure the unmarked graves of veterans, particularly those from historic eras, are appropriately marked. VA shares the goal of these individuals to ensure appropriate recognition of veterans who served the United States and proposes to revise the definition of applicant to ease the restrictive aspects of the definition and allow more individuals to apply for headstones and markers, including memorial headstones and markers.

We propose to place this revised definition in § 38.600(a). Section 38.600(b) contains other definitions that are used elsewhere in part 38, including the definition of one term that we intend to use in the revised definition of applicant, so putting all the definitions together is a logical step.

The revised definition of applicant recognizes that VA is authorized to provide two types of headstones or markers. Under 38 U.S.C. 2306(a), VA provides ''appropriate Government headstones or markers . . . for the unmarked graves'' of certain eligible individuals. Under section 2306(b), VA provides ''an appropriate memorial headstone or marker for the purpose of commemorating an eligible individual whose remains are unavailable.'' We do not believe we need to supply additional definitions of these items, since the statute has clearly identified the use for each, but for ease of identification in our regulations, we adopt the term ''burial headstone and marker'' for those items provided under section 2306(a) and ''memorial headstone and marker'' for those provided under section 2306(b).

We propose to recognize five categories of individuals who may submit requests for burial headstones and markers. In proposed § 38.600(a)(1), we would ensure that any family member can request a burial headstone or marker. We believe that burial and memorialization are among the most personal decisions that individuals make, and that family members generally make these decisions. However, as we have stated above, we understand that our current definition, which relies on the phrase ''next of kin,'' is too restrictive because it would not allow for extended relatives, such as fifth cousins and great-nieces or great-great-nephews, to request a headstone or marker for their relatives. We have chosen to use ''family member,'' and we provide clarification that this phrase would include the decedent's spouse, or the child, parent, or sibling of the decedent, whether biological, adopted, or step relation. In addition, because we may receive requests to provide burial headstones and markers for veterans who served decades and even centuries ago, we would allow for requests from a lineal or collateral descendant of the decedent. This would allow families who have recently discovered the military service of an ancestor to apply for memorialization of their deceased relative.

In addition to family members, we are also proposing that ''personal representatives'' would be allowed to apply for headstones or markers. Currently, our regulation limits applications by personal representatives to those who are specifically authorized by NOK or the decedent. This has also been the source of many denied applications. We propose to continue to allow personal representatives to apply, but we update the regulation by using an existing definition of the term contained in § 38.600(b). Our intent is to allow an individual who is responsible for the burial or memorialization of a deceased individual to apply for a headstone or marker. The current definition in § 38.600(b) requires the individual to identify himself or herself to an NCA cemetery director as ''the person responsible for making decisions concerning the interment of the remains of or memorialization of a deceased individual.'' In addition to referencing the definition in § 38.600(b), we would update § 38.600(b) by removing the requirement that the individual notify a cemetery director of their responsibilities toward the decedent. Our current processing of applications for headstones and markers, and burial benefits as well, generally involves contact first with the National Cemetery Scheduling Office or the Memorial Programs Service, located in NCA's central office. The removal of ''cemetery director'' from this definition reflects the current practice. Use of the revised definition of personal representative would allow for application for headstones and markers not only by family members, but also by individuals who have no familial relationship to the veteran but to whom the responsibility for final disposition of the remains or other related activities have fallen. For example, a close friend or a fellow veteran who served with the decedent may be called upon to make final arrangements for a veteran with no living family members. We want to make it possible for this individual to request memorialization of the veteran. Similarly, groups such as the Missing in America Project have made a significant contribution to finding the unclaimed remains of veterans and ensuring that they are provided with a final resting place. It is a logical step that the same individual who made the burial arrangements should be able to request memorialization as well. We note, however, that if these veterans are buried in a national cemetery, or in a state or tribal cemetery that has received a VA grant, no additional request for memorialization is necessary; a headstone or marker will be ordered as part of the burial process at all such cemeteries.

A particular type of personal representative, and one that we provide for separately here, is a congressionally charted Veterans Service Organization (VSO). Because these organizations provide numerous activities in service to veterans and families of veterans, we would accept applications from a VSO for a headstone or marker to mark the grave of an eligible deceased individual.

We also propose, in § 38.600(a)(1)(iv), to accept applications from individuals who have authority under state or local laws to make final arrangements for decedents. As may be expected, states and localities have varying laws on this topic, and we cannot detail each variation. However, some examples include an individual who is appointed by a county within a state to arrange burial of homeless or indigent individuals, or someone to whom a court of competent jurisdiction has issued an order providing the individual with authority to arrange burial or memorialization. We also include in this group funeral home directors, crematory operators, or those responsible for the operation and maintenance of a cemetery, because their activities are regulated by state or local laws. Any individual who provides documentation of such lawful duty would be eligible to apply for a headstone or marker for an eligible deceased individual.

In proposed § 38.600(a)(1)(v), we would address applicants for burial headstones and markers for graves of veterans whose service ended prior to April 6, 1917, or on whose service prior to April 6, 1917, the eligibility of another individual for memorialization is based. We chose to use April 6, 1917, because it is the date on which the United States entered World War I. We are aware that many individuals are interested in researching genealogy, either for themselves or others, or have broad interest in researching military history, including the burial of veterans. We know that many individuals have taken up the task of identifying burial places of veterans to obtain for them a lasting memorial to their service. We

applaud the efforts of these individuals and seek to recognize those efforts by allowing them to make an application if they identify an unmarked grave of an eligible individual. We believe that if the grave belongs to a veteran who served during World War I or later, it is more likely that a living family member (as defined in proposed paragraph (a)(1)) could be found. To ensure that family wishes are respected, we believe that an unrelated individual who identifies an unmarked grave of an eligible veteran who served during or after World War I should attempt to identify and contact family rather than making the application for a burial headstone or marker directly to VA.

Memorial headstones and markers, under section 2306(b), are distinct from burial headstones and markers and are authorized to commemorate an eligible individual whose remains are unavailable for burial. When an individual dies and is buried, the gravesite provides a place for family to gather to mourn and remember their loved one. The burial headstone or marker, particularly in a national cemetery, offers the family a physical remembrance of the individual and of the contribution of a veteran to our country. When a family has no remains to bury, they have no similar place to mourn. The memorial marker provides such a location. We believe this is why Congress limited the availability of the memorial headstones and markers to locations in cemeteries. We are proposing to limit the definition of applicant for memorial headstones and markers to family members, with the same parameters for that term as discussed above, so that a memorial headstone or marker retains the same symbolism and purpose that a burial headstone would have. It is a commemoration of an individual, not the service of the individual. The nation honors the service of veterans in many ways; the memorial headstone or marker allows families to honor their loved one individually.

We also propose to make several technical corrections to current regulations necessitated by this rulemaking. First, we would update the introductory paragraph in § 38.600(b) to make the definitions that follow pertain to all of part 38. These definitions were placed in § 38.600(b) as part of a rulemaking that promulgated § 38.617 and § 38.618, which bar burial benefits for individuals who committed capital crimes. However, a few of the terms defined in § 38.600(b) are used elsewhere in part 38, including interment, memorialization, and notably, personal representative. As discussed above, we propose to use this term in § 38.600(a). In addition, making these definitions apply to all of part 38 is a step we are making in anticipation of a general rewrite of part 38. We anticipate adding other definitions to this paragraph in future rulemakings designed to clarify our regulations and may consider relocation of the definitions in § 38.600, including the revised definition of applicant.

Second, as discussed above, we are proposing to remove the phrase ''cemetery director'' from the definition of personal representative in § 38.600(b), so that individuals may make themselves known to NCA in ways other than through the cemetery directors.

Finally, we propose to remove the phrase ''a Government-furnished headstone or marker and, in appropriate instances,'' from § 38.632(b)(1). The current regulation applies to applicants for headstones and markers and emblems of belief. We propose to remove the indicated language because the new definition we introduce in this rulemaking would apply to headstones and markers, and we propose to leave intact, at least for the present time, the definition of applicant in § 38.632 as it applies to emblems of belief (EOBs). We have received no negative feedback regarding use of this definition for EOBs. We may reconsider the definition in a future rulemaking as we rewrite part 38. We alert interested parties, however, that we are not accepting comments at this time on the definition of applicant as it pertains to EOBs. Such comments will be considered outside the scope of this rulemaking.

Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

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

Executive Order 12866 and 13563

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

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www1.va.gov/orpm,* by following the link for ''VA Regulations Published.''

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on September 18, 2014, for publication.

List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Claims, Crime, Veterans.

Dated: September 26, 2014.

William F. Russo,

Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, U.S. Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 38 as follows:

PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

■ 1. The authority citation for part 38 continues to read as follows:

Authority: 38 U.S.C. 107, 501, 512, 2306, 2402, 2403, 2404, 2408, 2411, 7105.

■ 2. Amend § 38.600 by:
■ a. Adding paragraph (a).
■ b. Removing ''§§ 38.617 and 38.618'' and adding in its place ''part 38'' in paragraph (b) introductory text.
■ c. Removing ''cemetery director'' from the definition of ''personal representative'' in paragraph (b).

The addition reads as follows:

§ 38.600 Definitions.

(a)(1) *Applicant defined—burial headstones and markers.* An applicant for a headstone or marker that will mark the gravesite or burial site of an eligible deceased individual may be:

(i) A decedent's family member, which includes the decedent's spouse; a child, parent, or sibling of the decedent, whether biological, adopted, or step relation; and any lineal or collateral descendant of the decedent;

(ii) A personal representative, as defined in paragraph (b) of this section;

(iii) A representative of a Congressionally-chartered Veterans Service Organization;

(iv) Any individual who is responsible, under the laws of the relevant state or locality, for the disposition of the unclaimed remains of the decedent or for other matters relating to the interment or memorialization of the decedent; or

(v) Any individual, if the dates of service of the veteran to be memorialized, or on whose service the eligibility of another individual for memorialization is based, ended prior to April 6, 1917.

(2) *Applicant defined—memorial headstones and markers.* An applicant for a memorial headstone or marker to commemorate an eligible individual must be a member of the decedent's family, which includes the decedent's spouse; a child, parent, or sibling of the decedent, whether biological, adopted, or step relation; and any lineal or collateral descendant of the decedent.

* * * * *

§ 38.632 [Amended]

■ 3. Amend § 38.632(b)(1) by removing ''a Government-furnished headstone or marker and, in appropriate instances,''.

[FR Doc. 2014–23330 Filed 9–30–14; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2014–0620; FRL–9914–86–OSWER]

RIN 2050–AG76

National Oil and Hazardous Substances Pollution Contingency Plan (NCP); Amending the NCP for Public Notices for Specific Superfund Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to add language to broaden the methods by which the EPA can notify the public about certain Superfund activities. Currently, the NCP requires that the public be notified of certain Superfund activities by publishing a notice in a major local newspaper of general circulation. By broadening the notification methods, the lead agency will be able to adopt a notification approach that is most effective at informing a community. The lead agency should assess the ways a community receives information and consider the notification approach which best suits a specific site and community.

DATES: Written comments must be received by October 31, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2014–0620, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: superfund.docket@epa.gov.*
- *Mail:* Send two copies of your comments to: U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Superfund Docket, Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0002.
- *Hand Delivery:* Deliver two copies of your comments to: EPA Docket Center (EPA/DC), WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. Attention Docket ID No. EPA–HQ–SFUND–2014–0620. Such deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m.–4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–2014–0620. 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. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *www.epa.gov/dockets.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Superfund Docket (Docket ID No. EPA–HQ–SFUND–2014–0620). This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0276. The EPA Docket Center (EPA/DC) is located at WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

General information: Superfund, TRI, EPCRA, RMP and Oil Information Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

Technical information: Jean Farrell at (703) 603–9055 (*farrell.jean@epa.gov*), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0002, Mail Code 5204P.

SUPPLEMENTARY INFORMATION:

I. Why is EPA issuing this proposed rule?

This document proposes to amend the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to expand the methods by which the EPA can notify the public about certain Superfund activities. The NCP requires the lead Agency to publish a notice ''in a major local newspaper of general circulation'' when certain Superfund site-related activities occur. Many of these requirements were established in 1990 or earlier versions of the NCP, when it was common practice for government agencies to publish notices of planned actions in newspapers. Today, multiple ways are used to notify the public about Superfund site-related activities that may be as or more effective than publishing notices in newspapers. For example, the public may be notified of certain actions the lead agency takes by distributing flyers door-to-door, mailing notices to homes, sending email notifications, making telephone calls or posting on Web sites. In certain cases, publishing a notice in a major newspaper of general circulation may not be the most effective way of notifying a community about a specific Superfund action, and may be less cost effective than other notification methods.

EPA is proposing to change the public notice language in the NCP. Instead of giving adequate notice to a community via a major local newspaper of general circulation, EPA is proposing that such notice be given via a major local newspaper of general circulation or by using one or more other mechanisms. As the Superfund community involvement program has gained experience working with communities around Superfund sites, EPA often has used additional communication approaches beyond publishing notices in major local newspapers of general circulation to ensure communities have an opportunity to be fully informed and involved in the Superfund process. Making this modification to the NCP will allow the lead agency to select an effective way or ways to inform the public.

One way the lead agency may learn about community preferences on communications approaches is when conducting community interviews as part of the development of the Community Involvement Plan (CIP) (also known as a Community Relations Plan) at a site. A CIP is a site-specific strategy to enable meaningful community involvement throughout the Superfund cleanup process. Consistent with the NCP [300.415(n)(3)(i); 300.415(n)(4)(i); and 300.430(c)(2)(i)], the lead agency conducts in those instances interviews with local officials, community residents, public interest groups, or other interested or affected parties, as appropriate, to solicit their concerns and information needs, and to learn how and when citizens would like to be involved in the Superfund process.

Conducting community interviews is a particularly effective way to gather information about how a community receives information. The information and insights gained from community interviews will help the lead agency make a decision on which notification approach suits a specific site and best encourages the community's participation. When community interviews are not conducted, the lead agency can determine community preferences on communication approaches by conducting activities such as consulting local leaders or media outlets to learn how a community typically receives information.

In addition to the above, Superfund has a long history of providing meaningful community involvement opportunities at critical junctures in the cleanup process, such as selection of remedial actions, five-year reviews of sites where waste is left in place, and deletions of sites from the National Priorities List (NPL). In addition to ensuring the basic requirements for community involvement are met, the lead agency may enlist additional community notification processes over and above the basic requirements to enhance the community's involvement, and tailor the communication approaches to meet the needs of the community.

II. What does this amendment do?

This document proposes to revise the NCP to expand the methods by which the EPA can notify the public about certain Superfund activities. This rule will revise six sections of the NCP to change the public notice language in the NCP to allow adequate notice to a community via a major local newspaper of general circulation or by using one or more other mechanisms. The intent of these sections is to ensure the lead agency informs the public of Superfund activities at defined stages within the Superfund process. Specifically, this amendment will add language to:

§ 300.415(n)(2)(i) that requires a notice of the availability of the administrative record file for CERCLA actions where, based on a site evaluation, the lead agency determines that a removal is appropriate, and that less than six months exists before on-site removal action must begin.

§ 300.415(n)(4)(ii) that requires notification of the engineering evaluation/cost analysis (EE/CA) where the lead agency determines that a CERCLA removal action is appropriate and that a planning period of at least six months exists prior to initiation of the on-site removal activities.

§ 300.425(e)(4)(ii) that requires notification of releases that may be deleted from the National Priorities List (NPL).

§ 300.815(a) that requires notification of the availability of the administrative record file for the selection of a remedial action at the commencement of the remedial investigation.

§ 300.820(a)(1) that requires notification of the availability of the administrative record file when an EE/CA is made available for public comment, if the lead agency determines that a removal action is appropriate and that a planning period of at least six months exists before on-site removal activities must be initiated.

§ 300.820(b)(l) that requires notification of the availability of the administrative record file for all other removal actions not included in § 300.820(a).

This document does not propose changes to the publication requirements of § 117 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Section 117(d) of CERCLA states ''[f]or the purposes of this section, publication shall include, at a minimum, publication in a major local newspaper of general circulation.'' Activities included under section 117 of CERCLA include section 117(a) notification of the proposed plan, section 117(b) notification of the final remedial action plan adopted, and section 117(c) notification of an explanation of differences after adoption of a final remedial action plan. Publication in a major local newspaper of general circulation will continue to be required for 1) notice of availability of the proposed plan (40 CFR 300.430(f)(3)(i)(A)), 2) notice of availability of the Record of Decision (40 CFR 300.430(f)(6)(i)), 3) notice that briefly summarizes the explanation of significant differences (40 CFR 300.435(c)(2)(i)(B)), 4) notice of availability and a brief description of the proposed amendment to the Record of Decision (40 CFR 300.435(c)(2)(ii)(A)), and 5) notice of availability of the amended Record of Decision (40 CFR 300.435(c)(2)(ii)(G)). This document also does not propose changes to the publication requirements of 40 CFR 35.4110 that requires publication of a notice in a local newspaper after EPA receives a letter of intent to apply for a Technical Assistance Grant.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this proposed action is not a ''significant regulatory action'' and is therefore not subject to OMB review. This action merely adds language to 40 CFR 300.415(n)(2)(i), 300.415(n)(4)(ii), 300.425(e)(4)(ii), 300.815(a), 300.820(a)(1), and 300.820(b)(l) to expand the methods by which the lead agency can notify the public about certain Superfund activities. This action will enable the lead agency to identify effective methods to notify the public. This action does not impose any requirements on any entity, including small entities. Therefore, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), after considering the economic impacts of this action on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. This action does not contain any unfunded mandates or significantly or uniquely affect small governments as described in Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this action has been exempted from review under Executive Order 12866, this proposed rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 19, 2014.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set forth in this preamble, Title 40, chapter 1, of the Code of Federal Regulations is proposed to be amended as follows:

PART 300–NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 is revised to read as follows:

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

■ 2. Section 300.415 is amended by revising paragraphs (n)(2)(i) and (n)(4)(ii) to read as follows:

§ 300.415 Removal action.

* * * * *

(n) * * *

(2) * * *

(i) Publish a notice of availability of the administrative record file established pursuant to § 300.820 in a major local newspaper of general circulation or use one or more other mechanisms to give adequate notice to a community within 60 days of initiation of on-site removal activity;

* * * * *

(4) * * *

(ii) Publish a notice of availability and brief description of the EE/CA in a major local newspaper of general circulation or use one or more other mechanisms to give adequate notice to a community pursuant to § 300.820;

* * * * *

■ 3. Section 300.425 is amended by revising paragraph (e)(4)(ii) to read as follows:

§ 300.425 Establishing remedial priorities.

* * * * *

(e) * * *

(4) * * *

(ii) In a major local newspaper of general circulation at or near the release that is proposed for deletion, publish a notice of availability or use one or more other mechanisms to give adequate notice to a community of the intent to delete;

* * * * *

■ 4. Section 300.815 is amended by revising paragraph (a) to read as follows:

§ 300.815 Administrative record file for a remedial action.

(a) The administrative record file for the selection of a remedial action shall be made available for public inspection

at the commencement of the remedial investigation phase. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice or use one or more other mechanisms to give adequate notice to a community of the availability of the administrative record file.

* * * * *

■ 5. Section 300.820 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 300.820 Administrative record file for a removal action.

(a) * * *

(1) The administrative record file shall be made available for public inspection when the engineering evaluation/cost analysis (EE/CA) is made available for public comment. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice or use one or more other mechanisms to give adequate notice to a community of the availability of the administrative record file.

* * * * *

(b) * * *

(1) Documents included in the administrative record file shall be made available for public inspection no later than 60 days after initiation of on-site removal activity. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice or use one or more other mechanisms to give adequate notice to a community of the availability of the administrative record file.

* * * * *

[FR Doc. 2014–23371 Filed 9–30–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2001–0002; FRL–9917–27–Region–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Consolidated Iron and Metal Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA), Region 2, is issuing a Notice of Intent to Delete the Consolidated Iron and Metal Superfund Site (Site), located in the City of Newburgh, Orange County, New York, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of New York, through the New York State Department of Environmental Conservation (NYSDEC), have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by October 31, 2014.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2001–0002, by one of the following methods:

- *Web site: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: negrelli.mike@epa.gov.*
- *Mail:* To the attention of Michael Negrelli, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, Emergency and Remedial Response Division, 290 Broadway, 20th Floor, New York, NY 10007–1866.
- *Hand Delivery:* Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866 (telephone: 212–637–4308). Such deliveries are only accepted during the Record Center's normal hours of operation (Monday to Friday from 9:00 a.m. to 5:00 p.m.). Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–2001–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 comments and with any disk or CD–ROM that you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses.

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 the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866, *Phone:* 212–637–4308, *Hours:* Monday to Friday from 9:00 a.m. to 5:00 p.m.

and

Newburgh Free Library, Consolidated Iron and Metal Site Repository File, 124 Grand Street, Newburgh, NY 12550, *Phone:* 845–563–3600, *Hours:* Monday & Thursday from 9:00 a.m. to 9:00 p.m., Tuesday, Wednesday, & Friday from 9:00 a.m. to 5:00 p.m., Saturday from 10:00 a.m. to 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: Michael Negrelli, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, Emergency and Remedial Response Division, 290 Broadway, 20th floor, New York, NY 10007–1866; (212) 637–4278; *negrelli.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

EPA Region 2 is announcing its intent to delete the Consolidated Iron and Metal Superfund Site from the NPL and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300, which

is the NCP, which EPA promulgated pursuant to Section 105 of CERCLA, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

EPA will accept comments on the proposal to delete this Site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Consolidated Iron and Metal Superfund Site and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other parties have implemented all appropriate response actions required;

ii. All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release of hazardous substances poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121 (c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site.

(1) EPA consulted with the State before developing this Notice of Intent to Delete.

(2) EPA has provided the State 30 working days for review of this notice prior to publication of it today.

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate.

(4) The State of New York, through the NYSDEC, has concurred with deletion of the Site from the NPL.

(5) Concurrently with the publication of this Notice of Intent to Delete in the **Federal Register**, a notice is being published in a major local newspaper, The Times Herald Record. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(6) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day public comment period on this document, EPA will evaluate and respond appropriately to the comments before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the Site, the Regional Administrator will publish a final Notice of Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and in the Site information repositories listed above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following summary provides EPA's rationale for deleting the Site from the NPL.

Site Background and History

The Consolidated Iron and Metal Site is an inactive car and scrap metal junk yard located at the foot of Washington Street in the City of Newburgh, Orange County, New York. The facility operated from the 1950s until 1999. The Site occupies about eight acres of land bordering the Hudson River in a mixed industrial, commercial, and residential area.

Scrap metal processing and storage operations took place at the Site during its period of operation. Various types of scrap metal were received, including whole automobiles, automobile engines, transmissions, batteries, keypunch machines, computer parts, white goods (appliances), and transformers. A smelter was used primarily to melt aluminum transmissions to produce a reusable aluminum product. Other materials were also smelted, resulting in a lead-contaminated ash/slag by-product. Other operations included sorting ferrous and non-ferrous scrap metal for recycling, baling and shearing large pieces of metal, including whole cars, into smaller pieces for transport, and flattening of cars. From 1997 to 1999, the NYSDEC conducted several inspections at the facility and cited the owner for a number of violations. Subsequent inspections by NYSDEC noted that the owner had failed to adequately correct the violations and in the fall of 1999, the New York State Attorney General shut down operations at the Site for various violations, including illegal discharges to surface water without a permit.

In August 1998, EPA sampled an ash/slag pile at the Site that was generated by the aluminum smelting operation and found it to be contaminated with lead and polychlorinated biphenyls (PCBs). The scrap metal in the pile was segregated out and the resulting fines pile, estimated at 6,600 tons, was removed from the Site in 1999 and placed in an approved treatment, storage, and disposal facility (TSDF) for stabilization and landfilling. Also in 1999, EPA sampled other processed soil piles at the Site which were also found to be contaminated with lead and PCBs; these soil piles were similarly transferred to an approved TSDF. Additionally in 1999, EPA constructed a berm from Site soils to prevent storm water from carrying Site contaminants into the Hudson River.

In September 1999, EPA conducted a preliminary study at the Site to determine the horizontal and vertical extent of contamination. Surface and subsurface soil and groundwater samples were collected and analyzed,

indicating the presence of volatile organic compounds (VOCs), semivolatile organic compounds (SVOCs), pesticides, PCBs, and metals at concentrations greater than background in the surface and subsurface soils. Further, PCBs and metals were detected in Hudson River sediments, which is a fishery and ecologically sensitive environment. Accordingly, the Site was proposed to the NPL on December 1, 2000 (65 FR 75215) and placed on the NPL on June 14, 2001 (66 FR 32235).

Remedial Investigation and Feasibility Study

In 2002, EPA developed a work plan for the performance of a remedial investigation and feasibility study (RI/FS) to more thoroughly determine the extent of contamination at the Site and to devise alternatives to mitigate the contamination. Prior to conducting the RI, it was necessary to clear the Site of the debris and some of the structures located on-Site. Accordingly, from June to September 2003, EPA conducted Site clearing operations which included the removal of tires, scrap metal, concrete, lead-impacted soil, and hydraulic oil from the Site and the demolition and clearing of the office building and three process-area buildings. The RI was initiated in June 2004 and followed by a FS in 2005 to evaluate potential alternatives to address the widespread soil contamination at the Site. A preferred alternative was presented to the public for review and comment in July 2006. Results or the RI and FS were summarized in the Record of Decision (ROD) issued by EPA in 2006.

Selected Remedy

The Site remedy was selected and memorialized in the Site ROD which was issued on October 4, 2006. The elements of the selected remedy were as follows:

- A remedial design (RD) program to provide the details necessary for the construction and monitoring of the remedial program;
- Removal and off-Site disposal of surface debris and demolition, removal, and off-Site disposal of the foundations/basements of the former process area buildings and of the former garage in its entirety;
- Excavation and off-Site disposal of contaminated soil exceeding the residential preliminary remediation goal (PRG) for lead (400 parts per million (ppm)) down to six feet below ground surface (bgs);
- Excavation and off-Site disposal of contaminated soil exceeding the PRG for VOCs and PCBs in subsurface soils (10 ppm total for each) to the water table;
- Placement of a readily-visible demarcation material at the interface between the excavations and backfill;
- Backfilling the excavated soil with clean fill, meeting the PRG values, to grade;
- Imposition of institutional controls in the form of an environmental easement and/or restrictive covenant that will at a minimum require: (a) Restricting any excavation below the soil cover's demarcation layer of six feet unless the excavation activities are in compliance with an EPA-approved site management plan (SMP); (b) restricting new construction at the Site unless an evaluation of the potential for vapor intrusion is conducted and mitigation, if necessary, is performed in compliance with an EPA-approved SMP; and (c) restricting the use of groundwater as a source of potable or process water unless groundwater quality standards are met;
- Development of a SMP that provides for the proper management of all Site remedy components post-construction, such as institutional controls, and that shall also include: (a) Monitoring of Site groundwater to ensure that, following the soil excavation, the contamination is attenuating and groundwater quality continues to improve; (b) an inventory of any use restrictions on the Site; (c) necessary provisions for ensuring the easement/covenant remains in place and is effective; (d) provision for any operation and maintenance required of the components of the remedy, and (e) the requirement that the owner or person implementing the remedy submit periodic certifications that the institutional and engineering controls are in place; and
- Periodic reviews by EPA to ensure that the remedy continues to be protective of public health and the environment.

Response Actions

In early 2007, EPA provided notice to the potentially responsible parties (PRPs) identified for the Site, offering them the opportunity to undertake the work. Negotiations concluded in 2008 with a Consent Decree cashout settlement entered into by certain of the PRPs and EPA, with EPA performing the work with a combination of PRP and federal funding. Under this Consent Decree, the City of Newburgh, as Site owner, also agreed to develop the SMP and the environmental easement/restrictive covenant placed on the Site. The Consent Decree was entered by the Court in February 2009.

In spring 2008, EPA conducted a topographic survey, geophysical survey, geoprobe sampling program, and test pit excavations to develop a design document for the remedial construction. The RD report was completed in October 2009.

From September through November 2008, EPA conducted certain preparatory activities at the Site to facilitate the remedial construction. These activities included the demolition and removal of the garage, the demolition and removal of the remaining building foundations, the removal of scrap metal and debris, and the dismantling and removal of a truck frame and metal barges from the shoreline of the Site. The former building foundation areas were backfilled with clean material and the truck frame and barge areas of the Site were replaced with boulders to restore the shoreline. The contaminated soil associated with the building foundation removal was sampled for disposal purposes and shipped to an appropriate facility in December 2008.

Following the preparatory activities, construction of the remedial action commenced on July 6, 2009. The work was done by EPA under the Emergency Rapid Response Services contract; the prime contractor was WRS Infrastructure & Environment Inc. The work was divided into two phases: Phase One involved the excavation and off-Site disposal of 60,000 tons of Site soils across the southern half of the Site to a depth of approximately six feet and backfilling with clean fill. Phase Two involved the excavation and off-Site disposal of approximately 30,000 tons of PCB and VOC impacted soils to the water table and the excavation and off-Site disposal of remaining Site soils, approximately 27,000 tons, covering the northern third of the Site to a depth of six feet (or deeper in the areas where site processes were conducted) and backfilling with clean fill. Phase One was completed in October 2009 and Phase Two was completed in August 2010.

Soil excavation and transport was carried out using clean-diesel equipment in accordance with the Region 2 Clean and Green policy. Excavated soil was transported under Phase One to a nearby rail depot in Newburgh, while excavated soil was transported under Phase Two to a rail depot in Middletown, New York. Soil was tested before leaving the Site to ensure its disposal in an appropriate facility. Trucks and railcars were lined and sealed to prevent spillage of material during transport and transfer.

Backfilling was performed concurrently with the excavation, maintaining an adequate buffer zone to

avoid cross contamination. Backfill material was tested for suitability before placement, meeting the guidelines set by NYSDEC for restricted residential use and the PRG values required by the ROD to be met for backfill. Prior to placement of the backfill, the base of the excavation was sampled on a 50-foot grid to characterize and document the soil remaining on Site; samples were analyzed for VOCs, SVOCs, PCBs, and metals. Geotextile fabric was then placed to demarcate the interface between potentially contaminated soil and clean backfill material. For approximately 80% of the Site, select structural fill suitable for redevelopment of the Site was placed in one-foot lifts and compacted to specification using a vibratory roller, and graded to design specification. The remaining 20% of the Site, essentially a 100-foot buffer along the river edge, required additional allowances for subsurface drainage and the backfill consisted of select structural fill, clean stone, geotextile, and silty loam or bank run. The eastern Site boundary adjacent to the Hudson River was graded to match the grade of the backfilled material and the bank fortified with rip rap along the entire river front. To allow for drainage along the north end of the Site, a shallow surface swale was constructed just inside the north fence line using the backfilled material. Following reaching final grade with backfill soil, the entire Site was covered with a minimum of six inches of topsoil and hydroseeded to provide a vegetative cover to ensure dust and erosion control.

Excavation, transport and backfilling were conducted from July 2009 through August 2010. Surveying was performed during the entire operation by a New York State licensed surveyor for documentation purposes and to ensure that lift layer depths were accurate. Dust suppression and air monitoring were routinely performed in accordance with design specifications.

In addition to the work performed on the Site, at the request of the New York State Department of Health (NYSDOH), EPA removed soils just beyond the north and south property boundaries to a depth of approximately two feet (where not hindered by utilities) and backfilled with clean fill. This was done to ensure that any contaminated soil that may have migrated beyond the Site property was also mitigated.

EPA conducted a pre-final inspection with NYSDEC at the Site on June 9, 2010, and a punch list was compiled. A final inspection of the Ste conducted on August 18, 2010 confirmed that all of the punch list items were determined to be completed. EPA completed its Remedial Action Report (RAR) for the Site on March 16, 2012. The RAR documented all the remedial activities conducted at the Site and included as-built drawings to document Site conditions at completion. The City of Newburgh, as current property owner, is responsible for management of the Site in accordance with the SMP developed for post-remediation uses of the Site. Site management responsibilities will be transferred to any future Site owner.

The ROD called for the following with respect to institutional controls: imposition of institutional controls in the form of an environmental easement and/or restrictive covenant that will at a minimum require: (a) Restricting any excavation below the soil cover's demarcation layer of generally six feet (deeper in some areas of the Site and shallower in others) unless the excavation activities are in compliance with an EPA-approved SMP; (b) restricting new construction at the Site unless an evaluation of the potential for vapor intrusion is conducted and mitigation, if necessary, is performed in compliance with an EPA-approved SMP; and (c) restricting the use of groundwater as a source of potable or process water unless groundwater quality standards are met. The restrictions are memorialized in an environmental easement filed with the Orange County Clerk on September 11, 2012. The environmental easement is filed on the eight acre parcel comprising the Site, identified in municipal records as Section 40, Block 3, Lot 3.

Cleanup Levels

Data are collected and reviewed to ensure that remedial action objectives (RAOs) are met following implementation of the remedial action. For this Site, RAOs were only established for soil. The RAOs for soil are: (1) Prevent or minimize exposure to human and ecological receptors through ingestion and inhalation of or dermal contact with contaminated soils; and (2) minimize or eliminate contaminant migration from Site soils to groundwater and surface water. These RAOs and the associated cleanup levels set forth in the ROD were met upon completion of the remedial construction, documented in the RAR for the Site dated March 16, 2012.

Due to the limited risks and exposure to the groundwater at this Site, institutional controls are deemed adequate to address any potential future exposure. Specifically, deed restrictions have been imposed to prevent the use of groundwater as a source of potable or process water unless groundwater quality standards are met. Long-term monitoring will be conducted to ensure that the selected Site remedy is protective of human health and the environment. The groundwater will be monitored as part of the post-construction response action to ensure that the contamination is attenuating and groundwater quality continues to improve.

In May 2013, groundwater samples were collected from the ten monitoring wells (MWs) re-developed at the Site following construction. Samples were analyzed for VOCs, SVOCs, PCBs, and inorganics.

VOCs were detected above screening criteria in two samples. Benzene, toluene, ethylbenzene, and m,p-xylene exceeded screening criteria in the sample collected from MW–1, with values of 22 micrograms per liter (ug/L), 9.9 ug/L, 720 ug/L, and 73 ug/L respectively. The sample collected from upgradient monitoring well MW–9 contained benzene at 5 ug/L.

The inorganic elements iron, magnesium, manganese, sodium, and zinc exceeded the screening criteria in most wells. However, these metals occur in high concentrations naturally in New York State and the trend in the levels measured in 2013 compared to levels measured in 2004 indicates decreasing concentrations. In addition, these screening criteria are secondary maximum contaminant levels (MCLs) established by the Safe Drinking Water Act. They will continue to be monitored. The contaminant of concern, lead, was detected above the screening criterion in a single sample collected from MW–6, at 70 ug/L.

Groundwater data review indicates that the low levels of contamination in Site groundwater are attenuating and groundwater quality has improved compared to baseline levels measured prior to remedial activities. The main contaminants of concern identified in the ROD were benzene and lead. In the 2013 sampling event, benzene was detected in both the background well and one on-Site well. Lead was detected in only one well above federal drinking water standards. These data support the ROD assumption that the groundwater contamination is localized and the decrease in frequency indicates that limited residual groundwater contamination has attenuated. The environmental easement placed on the Site property restricts the use of groundwater as a source of potable or process water unless groundwater quality standards are met. Groundwater quality will continue to be monitored in accordance with the SMP.

Operation and Maintenance

The ROD called for the development of an SMP to provide for the proper management of all post-construction remedy components. The SMP was approved in June 2014.

The SMP includes operation and maintenance (O&M) activities required for the Site. Because there are no mechanical systems installed at the Site, O&M activities consist of periodic inspections of the Site property (minimally once per year and additionally following severe weather events) to note general Site conditions and to ensure that the security fence and monitoring wells are in good repair. Groundwater sampling of the ten on-Site monitoring wells is conducted in accordance with the schedule established in the SMP to verify that the low levels of contamination in Site groundwater are attenuating and that groundwater quality improves as a result of the Site remediation.

In addition to media monitoring, O&M activities include periodic certification that the institutional controls established in the environmental easement attached to the Site property are unchanged and that nothing has occurred that would impair the ability to protect public health and the environment or otherwise constitute a violation or failure to comply with Site controls. This certification is provided in the Periodic Review Report, to be submitted annually by the Site owner.

Five-Year Review

Hazardous substances remain at this Site above levels that would allow for unlimited use and unrestricted exposure. Therefore, pursuant to CERCLA Section 121(c), EPA is required to conduct a review of the remedy at least once every five years. The first five-year review was completed on July 16, 2014. No issues, recommendations or follow-up actions have been identified during the five-year review. The five-year review concluded that the implemented remedy for the Site is protective of human health and the environment.

Community Involvement

Public participation activities for this Site have been satisfied as required in CERCLA Sections 113(k) and 117, 42 U.S.C. 9613(k) and 9617. As part of the remedy selection process, the public was invited to comment on the proposed remedy. All other documents and information that EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories identified above.

Determination That the Site Meets the Criteria for Deletion From the NCP

All of the completion requirements for this Site have been met, as described in the June 30, 2014 Final Close-Out Report. The State of New York, in a May 30, 2014 letter, concurred with the proposed deletion of this Site from the NPL. As described in this Notice of Intent to Delete, the implemented remedy achieves the degree of cleanup specified in the ROD for all exposure pathways; the selected RAOs for the Site and associated cleanup levels are consistent with agency policy and guidance; and no further Superfund response is needed to protect human health and the environment.

The NCP specifies that EPA may delete a site from the NPL if all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate [40 CFR 300.425(e)]. EPA, with the concurrence of the State of New York, believes that this criterion for deletion has been met. Consequently, EPA is intending to delete this Site from the NPL. Documents supporting this action are available for review at the information repositories identified above.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O.12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

Dated: September 19, 2014.

Judith A. Enck,

Regional Administrator, EPA, Region 2.

[FR Doc. 2014–23354 Filed 9–30–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 721

[EPA–HQ–OPPT–2007–0490; FRL–9912–87]

RIN 2070–AJ96

Certain Nonylphenols and Nonylphenol Ethoxylates; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Toxic Substances Control Act (TSCA), EPA is proposing a significant new use rule (SNUR) for 15 related chemical substances commonly known as nonylphenols (NP) and nonylphenol ethoxylates (NPE). For 13 NPs and NPEs, EPA is proposing to designate any use as a ''significant new use,'' and for 2 additional NPs, EPA is proposing that any use other than use as an intermediate or use as an epoxy cure catalyst would constitute a ''significant new use.'' Persons subject to these SNURs would be required to notify EPA at least 90 days before they manufacture (including import) or process any of these 15 chemical substances for a significant new use. The required notification would provide EPA with the opportunity to evaluate the new uses and protect against unreasonable risks, if any, from potential new exposures to NPs and NPEs, before that activity occurs.

DATES: Comments must be received on or before December 1, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2007–0490, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information regarding the SNUR, contact:* Jeffrey Taylor, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8828; email address: *taylor.jeffrey@epa.gov.*

For general information, contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by these actions if you manufacture (including import) or process any of the chemical substances covered by this proposed SNUR. The North American Industrial Classification System (NAICS) codes that are identified in this unit are not intended to be exhaustive, but rather provide a guide to help readers determine whether this rule applies to them. Potentially affected entities may include:

- Manufacturers (including importers) or processors of one or more of the subject chemical substances (North American Industrial Classification System (NAICS) codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.
- Surface active agent manufacturers (NAICS code 325613).

This action may also affect certain entities due to pre-existing import certification and export notification rules under TSCA. Persons who import any chemical substance governed by a final SNUR are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after October 31, 2014 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20) and must comply with the export notification requirements in 40 CFR part 707, subpart D.

To determine whether you or your business may be affected by this action, you should carefully examine the applicability of provisions in 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)). As described in Unit V., the general SNUR provisions are found at 40 CFR part 721, subpart A.

C. What action is the agency taking?

EPA is proposing a SNUR for 15 NPs and NPEs. EPA is proposing to designate any use of the 13 NPs and NPEs listed in Table 1 of Unit II.A. as a significant new use, and any use other than use as an intermediate or use as an epoxy cure catalyst as a significant new use of the 2 additional NPs listed in Table 2 of Unit II.A.

This proposed SNUR would apply to the uses that are not ongoing at the time of this proposed rule. Uses not ongoing at the time of the proposal would be designated significant new uses in the final SNUR. EPA is requesting public comment on this proposal, and specifically on whether the Agency has correctly identified the current and ongoing uses of the 15 NPs and NPEs covered by this proposed rule. EPA is particularly interested in whether anyone is currently using these chemicals in a manner that is not described in this proposal.

Persons subject to a SNUR would be required to notify EPA at least 90 days before commencing manufacture (including import) or processing of any of the subject chemical substances for a significant new use, consistent with the requirements at 40 CFR 721.25.

D. Why is the agency taking this action?

This proposed SNUR is necessary to ensure that EPA receives timely advance notice of any future manufacturing and processing of these chemical substances for the designated new uses to allow the Agency to evaluate any potential changes in human and environmental exposures. The rationale and objectives for this proposed SNUR are explained in Unit III.

E. What are the estimated incremental impacts of this action?

EPA has evaluated the potential costs of establishing SNUR reporting requirements for potential manufacturers and processors of the chemical substances included in this proposed rule. This analysis, which is available in the docket, is discussed in Unit IX., and is briefly summarized here. In the event that a SNUN is submitted, costs are estimated at approximately $8,589 per SNUN submission for large business submitters and $6,189 for small business submitters. These estimates include the cost to prepare and submit the SNUN and the payment of a user fee. In addition, for persons exporting a substance that is the subject of a SNUR, a one-time notice must be provided for the first export or intended export to a particular country, which is estimated to cost less than $100 on average per notification.

Since EPA is unable to predict whether anyone might engage in future activities that would require reporting, potential total costs are estimated to range from $0 to less than $10,000.

II. Chemical Substances Subject to This Proposed Rule

A. What chemicals are subject to this proposed SNUR?

This proposed SNUR would apply to the 15 NPs and NPEs in Tables 1 and 2 of this unit. To ascertain whether these chemicals are currently in commerce, EPA analyzed uses that are described in Unit II.B, and also reviewed the most recent data from EPA's Chemical Data Reporting (CDR) database (Ref. 1). Twelve of the 13 linear NPs and NPEs in Table 1 of this unit are not reported on CDR. One NPE chemical, known as poly(oxy-1,2-ethanediyl), α(nonylphenyl)-ω-hydroxy-(CASRN 9016–45–9), also listed in Table 1 of this unit, was reported to the 2012 CDR. EPA believes, however, that the manufacturer incorrectly identified the chemical in its CDR report, and that, in fact, poly(oxy-1,2-ethanediyl), α(nonylphenyl)-ω-hydroxy-(CASRN 9016–45–9) is not currently manufactured for any use. The manufacturer reported the chemical identity as a linear form of NPE, but the available information indicates that the manufacturer should have reported the

identity as a branched NPE. Based on chemical engineering literature and industry expert sources, as described later in this unit, EPA's understanding is that only branched forms of NP and NPE chemical substances are currently manufactured for commercial purposes. The two chemical substances listed in Table 2 were both reported to the 2012 CDR and are used as an intermediate and as an epoxy cure catalyst.

TABLE 1—NPS AND NPES FOR WHICH ANY USE IS A SIGNIFICANT NEW USE

Chemical name	Chemical abstracts index name	Chemical Abstracts Service Registry No. (CASRN)	NP or NPE
4-nonylphenol	Phenol, 4-nonyl-	104–40–5	NP
2-[2-[2-[2-(4-nonylphenoxy)ethoxy]ethoxy]ethoxy]ethanol	Ethanol, 2-[2-[2-[2-(4-nonylphenoxy)ethoxy]ethoxy]ethoxy]-.	7311–27–5	NPE
α(Nonylphenyl)-ω-hydroxy-poly(oxy-1,2-ethanediyl)	Poly(oxy-1,2-ethanediyl), α(nonylphenyl)-ω-hydroxy-	9016–45–9	NPE
2-[2-(4-nonylphenoxy)ethoxy]ethanol	Ethanol, 2-[2-(4-nonylphenoxy)ethoxy]-	20427–84–3	NPE
Nonylphenol	Phenol, nonyl-	25154–52–3	NP
α-(4-Nonylphenyl)-ω-hydroxy-poly(oxy-1,2-ethanediyl)	Poly(oxy-1,2-ethanediyl), α-(4-nonylphenyl)-ω-hydroxy-	26027–38–3	NPE
2-[2-[2-[2-[2-[2-[2-[2-(Nonylphenoxy)ethoxy]ethoxy]ethoxy]ethoxy]ethoxy]ethoxy]ethoxy]ethanol.	3,6,9,12,15,18,21,24-Octaoxahexacosan-1-ol, 26-(nonylphenoxy)-.	26571–11–9	NPE
2-[2-(Nonylphenoxy)ethoxy]ethanol	Ethanol, 2-[2-(nonylphenoxy)ethoxy]-	27176–93–8	NPE
2-[2-[2-[2-[2-[2-[2-(nonylphenoxy)ethoxy]ethoxy]ethoxy]ethoxy]ethoxy]ethoxy]ethanol.	3,6,9,12,15,18,21-Heptaoxatricosan-1-ol, 23-(nonylphenoxy)-.	27177–05–5	NPE
2-[2-[2-[2-[2-[2-[2-[2-[2-(nonylphenoxy)ethoxy]ethoxy]ethoxy]ethoxy]ethoxy]ethoxy]ethoxy]ethoxy]ethanol.	3,6,9,12,15,18,21,24,27-Nonaoxanonacosan-1-ol, 29-(nonylphenoxy)-.	27177–08–8	NPE
2-(Nonylphenoxy)ethanol	Ethanol, 2-(nonylphenoxy)-	27986–36–3	NPE
α-(Isononylphenyl)-ω-hydroxy-poly(oxy-1,2-ethanediyl)	Poly(oxy-1,2-ethanediyl), α-(isononylphenyl)-ω-hydroxy-	37205–87–1	NPE
α-(2-Nonylphenyl)-ω-hydroxy-poly(oxy-1,2-ethanediyl),	Poly(oxy-1,2-ethanediyl), α-(2-nonylphenyl)-ω-hydroxy-	51938–25–1	NPE

TABLE 2—NPS FOR WHICH ANY USE OTHER THAN AS AN INTERMEDIATE OR EPOXY CURE CATALYST IS A SIGNIFICANT NEW USE

Chemical name	Chemical abstracts index name	Chemical Abstracts Service Registry No. (CASRN)	NP or NPE
4-nonylphenol, branched	Phenol, 4-nonyl-, branched	84852–15–3	NP
2-nonylphenol, branched	Phenol, 2-nonyl-, branched	91672–41–2	NP

NPs and NPEs consist of a nine carbon nonyl group in either branched or linear form bound at various positions *(ortho, meta, or para)* around a phenol ring. Nonylphenol is produced by the acid-catalyzed reaction of nonene and phenol. The degree of branching of the nonene used in that reaction determines the degree of branching in the product NP. EPA's understanding of the chemistry and engineering of commercial NP production is that it starts with nonene that is produced by acid-catalyzed propylene trimerization. Nonene produced in this way is a complex mixture of highly branched alkenes and contains negligible amounts of linear olefins. Manufacturers combine this highly branched nonene with phenol in an acid-catalyzed reaction. This reaction pathway is described in the literature and industry publications. For example, the Kirk-Othmer Encyclopedia of Chemical Technology states, ''All commercially produced PNP [*para*-nonylphenol, or 4-nonylphenol] is made from nonene based on the trimerization of propylene'' (and therefore is highly branched) (Ref. 2). Similarly, industry assessments state that commercial nonene (used to make NP) does not contain linear C_9H_{18} alpha-olefin; rather, it is a complex mixture of highly branched, predominantly nine-carbon olefins known as propylene trimers (Ref. 3). Additionally, some industrial sources assert that linear NP is a laboratory chemical substance that is not used in commerce and is not a degradant found in the environment (Ref. 4).

During the development of a testing consent order on 4-nonylphenol (Ref. 5), the Alkylphenols and Ethoxylates Panel of the American Chemistry Council (ACC) confirmed EPA's assessment, stating that, as it is currently manufactured, nonylphenol is a substance comprising mostly branched C9-alkyl phenols and is best represented by 4-nonylphenol, Chemical Abstract Services Registry Number (CASRN) 84852–15–3.

B. What are the uses and production levels of the NPs and NPEs covered by this proposed SNUR?

Branched 4-nonylphenol (CASRN 84852–15–3), in Table 2 of this unit, was reported to the 2012 CDR at 100–500 million pounds production volume. Branched 2-nonylphenol (CASRN 91672–41–2), also in Table 2 of this unit, was reported to the 2012 CDR at 1–10 million pounds production volume.

Linear NPE, poly(oxy-1,2-ethanediyl), α(nonylphenyl)-ω-hydroxy-(CASRN 9016–45–9), in Table 1 of this unit, was reported to the 2012 CDR with a 2011 production volume ranging from 10 million to 50 million pounds. As described earlier in this unit, EPA believes that this linear NPE was incorrectly identified and the manufacturer was in fact producing a branched NPE (i.e., another chemical entirely). The other 12 linear NPs and NPEs have no reported production volume on the 2012 CDR. Nonylphenol (CASRN 25154–52–3), in Table 1 of this unit, was initially reported to the 2012

CDR, but EPA understands that the chemical should have been reported as either branched NP CASRN 84852–15–3 or branched NP CASRN 91672–41–2. Companies who reported nonylphenol with CASRN 25154–52–3 to the 2012 CDR have corrected their reports, which results in the chemical having no production volume on the 2012 CDR.

Certain NPs are used primarily as intermediates to produce other chemical substances, notably NPEs. NPEs are manufactured by reacting the hydroxyl group (-OH) of NP with ethylene oxide in an iterative process, forming a combination of NPEs of various chain lengths, typically ranging from 4 to 80 ethoxylate (EO) groups. The commonly-used NPEs have chain lengths averaging 8 to 12 EO groups, and commercial NPEs will contain NPEs of various chain lengths. Different degrees of ethoxylation impart different properties, which make the chemical substances useful in a variety of applications.

EPA accessed information from the 2012 CDR database, along with the Household Products Database and the Consumer Product Information Database, in order to analyze use of NPs and NPEs broadly within U.S. commerce (Refs. 1, 6, and 7). Reported NPs are used as intermediates to create NPEs, and they are also used as epoxy cure catalysts. Reported NPEs are used in a wide range of applications, and can be found in consumer products related generally to home care, personal hygiene, automotive, and lawn care. Specifically, the NPEs are used in: Laundry detergents, engine and battery cleaners, all-purpose cleaners, paints, metal polishers, stain pretreatment, sealants, paint/varnish strippers, wallpaper removers, hand cleaners, floor strippers, disinfectant/mold inhibitors, concrete cleaners, tile/grout cleaners, degreasers, brush cleaners, tile adhesives, and wood finishes (Refs. 1, 6, 7, 8, and 9).

C. What are the potential environmental effects of, and routes and sources of exposure to, the NPs and NPEs covered by this proposed SNUR?

NPs and NPEs with only one or two EO groups are persistent, low-to-moderately bioaccumulative, and highly toxic to aquatic organisms. In general, toxicity to environmental organisms increases with decreasing degrees of ethoxylation for nonylphenolic compounds, with NPs being most toxic. NPEs with greater degrees of ethoxylation, while less toxic, degrade to the more toxic and persistent, less ethoxylated forms of these chemical substances in the environment. Available data indicate that these chemical substances are highly toxic to fish and invertebrates, causing lethality on an acute basis and effects on survival, growth, development, metabolism, reproduction, and fecundity with low-level chronic exposures (Refs. 10 and 11). EPA has established water quality criteria for NPs of 6.6 microgram per litre (μg/L) for acute exposures and 1.7 μg/L for chronic exposures (Ref. 12). EPA has not established water quality criteria for NPEs. Environment Canada has also established a concern level for NPs (and NPEs, as expressed in NP toxic equivalency units) of 0.7 μg/L for indefinitely chronic exposures (Refs. 12 and 13). EPA recognizes that NPs and NPEs may be endocrine bioactive (Refs. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24).

Certain NPs and NPEs are produced in large volumes, with uses in a wide range of applications (e.g., home care, personal hygiene, automotive, and lawn care consumer products) that lead to widespread releases to the aquatic environment. NPEs are clear to light orange oily liquids or waxy solids, and are considered to be chemically stable and unreactive (Ref. 25). NPEs show a gradual, linear increase in water solubility with greater degree of ethoxylation (e.g., the reported water solubility of NP with five ethoxyl groups attached, NP5EO, is 9.48 mg/L; and the reported water solubility of NP with twelve ethoxyl groups attached, NP12EO, is 42.5 mg/L) (Refs. 26 and 27). The most important processes affecting the persistence, distribution, and bioavailability of nonylphenolic substances in the environment are biodegradation and sorption (Refs. 28, 29, 30, and 31). NPEs with greater degrees of ethoxylation degrade to less ethoxylated forms of these chemical substances in the environment. NPEs with fewer degrees of ethoxylation continue to degrade slowly to NPs. NPs, especially highly branched NPs, degrade most slowly (Refs. 8 and 9). The aerobic and anaerobic biodegradation of NPEs occurs through different reaction pathways resulting in the formation of different degradation products. Under aerobic conditions, evidence shows that carboxylated NPEs (NPECs) of higher ethoxamers are quickly formed (e.g., NP9EC from NP9EO), followed by shortening of the ethoxylate chain through the deethoxylation pathway (e.g., NP2EC from NP9EC), and oxidation of the nonyl chain to form dicarboxylated derivatives. Such dicarboxylated products are referred to as carboxylated nonylphenyl ethoxycarboxylates, or CAPECs. Under anaerobic conditions, the dominant degradation pathways for NPEs is most likely deethoxylation (e.g., NP1EO and NP2EO from higher ethoxamers) and *O*-dealkylation (e.g., NP from NP2EO) (Refs. 32 and 33). The resistance of NPs to further degradation under anaerobic conditions is a contributing factor to their accumulation in sludge.

Ecological receptors can potentially be significantly exposed to NPs and NPEs under current manufacturing practices as a result of surface water discharges from facilities that manufacture products containing NPs or NPEs (Ref. 34). Once released into the environment, NPs and NPEs tend to partition to sediments and accumulate (Ref. 35). Thus, even if the discharges decrease, or cease, environmental exposures can continue.

A range of levels of NPs and NPEs have been measured in surface water and sediment in U.S. waters. Certain NPEs are widely used in industrial processes and cleaning products, including industrial laundry detergents, and are frequently found in wastewater and sewage treatment plant effluents, with subsequent discharge into the environment (Ref. 36). Localized monitoring studies have found surface waters near industrial discharges contained NPs in concentrations ranging from 2 to 1,617 μg/L (Ref. 37) and NP concentrations in more diffuse surface water and sediments in the Great Lakes ranging from 0.01 to 0.92 μg/L for water and 37 to 300 μg/g for sediments (Ref. 36). In surface water samples collected along the Ohio River, total NPEs ranged from 0.13 to 1.0 μg/L for water, from 250 to 1,020 μg/g for sediments, and from 32 to 920 μg/g for carp, a bottom dwelling fish (Ref. 38). Some of the measured surface water concentrations, particularly those near industrial discharges, exceeded the EPA Water Quality Criteria set for freshwater species living in the water column. Nonylphenol has also been found in Minnesota lakes, with maximum concentrations reaching 20 ng/L (Ref. 39). NPs and NPEs in freshwater and saltwater ecosystems can potentially cause ecological effects on all trophic levels of aquatic species exposed to them (Ref. 12).

III. Rationale and Objective

A. Rationale

NPs and short-chain NPE ethoxymers (NP with one ethoxyl group attached, NP1EO, and NP with two ethoxyl groups attached, NP2EO) are persistent, low-moderately bioaccumulative, and highly toxic to aquatic organisms. Available data indicate that these

substances are highly toxic to fish and invertebrates, causing lethality on an acute basis and effects on survival, growth, development, metabolism, reproduction, and fecundity with low-level chronic exposures (Refs. 10 and 11). Exposure occurs through industrial and wastewater discharges that ultimately reach surface waters and sediments. NPs and NPEs can potentially cause ecological effects on all trophic levels of aquatic species exposed to them in freshwater and saltwater ecosystems (Ref. 12).

Of the 13 linear NPs and NPEs listed in Table 1 of Unit II.A., 12 of the chemical substances were not reported to the 2012 CDR. One of these 13 substances was reported to the 2012 CDR, but as discussed in Unit II.B., the available information indicates that the chemical substance is not currently being manufactured or is otherwise used or distributed in commerce. The two branched NPs listed in Table 2 of Unit II.A. are not in use except as intermediates and epoxy cure catalysts. Based on the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of these chemical substances, EPA is concerned that future manufacturing or processing of these 15 NP and NPE chemicals could have the potential to significantly increase the magnitude and duration of environmental exposures. As previously discussed, based on current use and manufacturing practices, NPEs are frequently found in wastewater and sewage treatment plant effluents, with subsequent discharge into the environment. EPA has no reason to anticipate that future manufacturing practices and uses are likely to result in lower discharges.

Accordingly, EPA has determined that individual evaluation of the activities associated with those new uses is warranted to allow the Agency to determine whether any controls are necessary before such manufacturing (including importing) or processing starts or resumes. The required notification provided by a SNUN would provide EPA with the opportunity to evaluate the new uses and protect against unreasonable risks, if any, from potential new exposures to NPs and NPEs.

Consistent with EPA's past practice for issuing SNURs under TSCA section 5(a)(2), EPA's decision to propose a SNUR for a particular chemical use need not be based on an extensive evaluation of the hazard, exposure, or potential risk associated with that use. Rather, the Agency action is based on EPA's determination that if the use begins or resumes, it may present a risk that EPA should evaluate under TSCA before the manufacturing or processing for that use begins. Since the new use does not currently exist, deferring a detailed consideration of potential risks or hazards related to that use is an effective use of resources. If a person decides to begin manufacturing or processing the chemical substance for the use, the notice to EPA allows the Agency to evaluate the use according to the specific parameters and circumstances surrounding that intended use.

B. Objective

Based on the considerations in Unit IV.A., EPA wants to achieve the following objectives through this action:

1. EPA would receive notice of any person's intent to manufacture (including import) or process the 15 NPs and NPEs for the described significant new uses before that activity begins.
2. EPA would have an opportunity to review and evaluate any data submitted in a SNUN before the notice submitter begins manufacturing (including importing) or processing of the 15 NPs and NPEs for the described significant new use.
3. EPA would be able to regulate prospective manufacturers (including importers) or processors of these chemical substances before the described significant new use of the chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.

IV. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors including:

1. The projected volume of manufacturing and processing of a chemical substance.
2. The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
3. The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
4. The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors.

To determine what would constitute a significant new use of the 15 NPs and NPEs subject to this proposed rule, EPA considered relevant information about the toxicity of the substances, exposures, environmental releases, and the four factors listed in section 5(a)(2) of TSCA.

EPA has preliminarily determined that any use of the 13 linear NPs and NPEs listed in Table 1 of Unit II.A. is a significant new use. EPA has also preliminarily determined that any use of the branched NPs listed in Table 2 of Unit II.A., other than use as an intermediate or use as an epoxy cure catalyst, is a significant new use. As discussed previously in this unit, EPA is concerned that future manufacturing or processing of these 15 NP and NPE chemicals could have the potential to significantly increase the magnitude and duration of environmental exposures, and EPA has no reason to anticipate that future manufacturing practices and uses are likely to result in lower discharges.

V. Applicability of General Provisions

General provisions for SNURs appear under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule.

Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of Premanufacture Notices (PMNs) under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA sections 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who export or intend to export a chemical substance that is the subject of a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707, subpart D. Persons who import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, codified at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Such persons must certify that the shipment of the chemical

substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B.

VI. Applicability of the Rule to Uses Occurring Before Effective Date of the Final Rule

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376) (FRL–3658–5), EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of publication of the proposed rule rather than as of the effective date of the final rule. If uses that had begun after the proposed rule was published were considered ongoing rather than new, any person could defeat the SNUR by initiating the significant new use before the final rule was issued. Therefore, EPA designates October 1, 2014 as the cutoff date for determining whether any of the uses that are the subject of this proposal are ongoing. Persons who begin commercial manufacture or processing of the chemical substances for a significant new use identified as of that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until the notice review period, including any extensions, expires. If such a person met the conditions of advance compliance under 40 CFR 721.45(h), the person would be considered exempt from the requirements of the SNUR. Consult the **Federal Register** final rule of April 24, 1990 for a more detailed discussion of the cutoff date for ongoing uses.

VII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not usually require developing any particular test data before submission of a SNUN. There are two exceptions:

- Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)); and
- Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a section 4 test rule or a section 5(b)(4) listing covering the chemical substance, persons are required to submit only test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (15 U.S.C. 2604(d); 40 CFR 721.25, and 40 CFR 720.50). However, as a general matter, EPA recommends that SNUN submitters include data that would permit a reasoned evaluation of risks posed by the chemical substance during its manufacture, processing, use, distribution in commerce, or disposal. EPA encourages persons to consult with the Agency before submitting a SNUN. As part of this optional pre-notice consultation, EPA would discuss specific data that may be useful in evaluating a significant new use. SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e) to prohibit or limit activities associated with this chemical substance.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs that provide detailed information on:

1. Human exposure and environmental releases that may result from the significant new uses of the chemical substance,
2. Potential benefits of the chemical substance, and
3. Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

VIII. SNUN Submissions

EPA recommends that submitters consult with the Agency prior to submitting a SNUN to discuss what data may be useful in evaluating a significant new use. Discussions with the Agency prior to submission can afford ample time to conduct any tests that might be helpful in evaluating risks posed by the substance. According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 721.25 and 40 CFR 720.40. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

IX. Economic Analysis

A. SNUNs

EPA has evaluated the potential costs of establishing SNUR reporting requirements for potential manufacturers and processors of the chemical substance included in this proposed rule (Ref. 40). In the event that a SNUN is submitted, costs are estimated at approximately $8,589 per SNUN submission for large business submitters and $6,189 for small business submitters. These estimates include the cost to prepare and submit the SNUN, and the payment of a user fee. Businesses that submit a SNUN would be subject to either a $2,500 user fee required by 40 CFR 700.45(b)(2)(iii), or, if they are a small business with annual sales of less than $40 million when combined with those of the parent company (if any), a reduced user fee of $100 (40 CFR 700.45(b)(1)). EPA's complete economic analysis is available in the public docket for this proposed rule (Ref. 40).

B. Export Notification

Under TSCA section 12(b) and the implementing regulations at 40 CFR part 707, subpart D, exporters must notify EPA if they export or intend to export a chemical substance or mixture for which, among other things, a rule has been proposed or promulgated under TSCA section 5. For persons exporting a substance that is the subject of a SNUR, a one-time notice must be provided for the first export or intended export to a particular country. The total costs of export notification will vary by chemical substance, depending on the number of required notifications (i.e., the number of countries to which the chemical substance is exported). EPA is unable to make any estimate of the likely number of export notifications for the chemical substance covered in this proposed SNUR.

X. Alternatives

Before proposing the SNUR, EPA considered the following alternative regulatory actions:

A. Promulgate a TSCA Section 8(a) Reporting Rule

Under a TSCA section 8(a) rule, EPA could, among other things, generally require persons to report information to the Agency when they intend to manufacture (including import) or process a listed chemical substance for a specific use or any use. However, for the 15 NPs and NPEs subject to this proposed rule, the use of TSCA section 8(a) rather than SNUR authority would have several limitations. First, if EPA were to require reporting under TSCA section 8(a) reporting for new uses instead of TSCA section 5(a), then EPA would not have the opportunity to review human and environmental hazards and exposures associated with the proposed significant new use and, if necessary, take immediate follow-up regulatory action under TSCA sections 5(e) or 5(f) to prohibit or limit the activity before it begins. In addition,

EPA may not receive important information from small businesses because such firms generally are exempt from TSCA section 8(a) reporting requirements. In view of the level of environmental concerns about the 15 NPs and NPEs, EPA believes that a TSCA section 8(a) rule for this substance would not meet EPA's regulatory objectives.

B. Regulate NPs and NPEs Under TSCA Section 6

Under TSCA section 6, EPA may regulate a chemical substance if ''the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use or disposal of a chemical substance or mixture . . . presents or will present an unreasonable risk of injury to health or the environment'' (TSCA section 6(a)). Because EPA believes that the 13 NP and NPE chemical substances listed in Table 1 of Unit II.A. are not being used and the 2 NPs listed in Table 2 of Unit II.A. are not being used other than as an intermediate or epoxy cure catalyst, EPA concluded that risk management action under TSCA section 6 is not warranted at this time. EPA believes that this proposed SNUR would allow the Agency to effectively address concerns surrounding any proposed significant new use, should they arise, by requiring prior notice of the use and allowing EPA a 90-day review period in which EPA would evaluate the use and could take action, as appropriate, under TSCA sections 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUN.

XI. Request for Comment

A. Do you have comments or information about ongoing uses?

EPA welcomes comment on all aspects of this proposed rule. EPA based its understanding of the use profile of these chemical substances on the 2012 CDR submissions, engineering literature, and communications with industry representatives. To confirm EPA's understanding, the Agency is requesting public comment on all aspects of this proposed rule, including the commercial production of linear forms of NPs and NPEs, as well as any ongoing uses of the subject chemical substances.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

XII. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA (2013). *Chemical Data Reporting.* August 7, 2014; Available from: *http://www.epa.gov/cdr.*
2. Lorenc, J.F., Lambeth, Gregory, and Scheffer, William (2000). *Alkylphenols.* Kirk-Othmer Encyclopedia of Chemical Technology.
3. Klecka, G.M., Staples, C.A., Losey, B.S., and Woodburn, K.B. (2005). *APERC Assessment of the Persistence and Bioaccumulation Potential for Nonylphenol, Octylphenol, and Their Ethoxylates for Categorization and Screening of the Canadian Domestic Substance List (DSL).*
4. APERC (2010). *Statement on EPA Estrogenic Screening Results for Nonylphenol and Nonylphenol Ethoxylates.*
5. EPA (1990). *Testing Consent Order on 4-Nonylphenol, Branched.* Final Rule. 55 FR 5991.
6. NIH (2013). *Household Products Database: Nonylphenol and Nonylphenol Ethoxylates.* August 6, 2014; Available from: *http://hpd.nlm.nih.gov/index.htm.*
7. CPID (2013). *Consumer Product Information Database: Nonylphenol and Nonylphenol Ethoxylates.* August 6, 2014; Available from: *http://whatsinproducts.com/index.php.*
8. EPA (2010). *Nonylphenol (NP) and Nonylphenol Ethoxylates (NPEs) Action Plan.*
9. EPA (2009). *Testing of Certain Nonylphenol and Nonylphenol Ethoxylate Substances: Advance Notice of Proposed Rulemaking (ANPRM).* 40 CFR part 799.
10. Staples, C., Mihaich, E., Carbone, J., Woodburn, K., and Klecka, G. (2004). *A Weight-of-Evidence of the Chronic Ecotoxicity of Nonylphenol Ethoxylates, Nonylphenol Ether Carboxylates, and Nonylphenol.* Human and Ecological Risk Assessment. 10: p. 999–1017.
11. Servos, M.R. (1999). *Review of the Aquatic Toxicity, Estrogenic Responses, and Bioaccumulation of Alkylphenols and Alkylphenol Polyethoxylates.* Water Quality Research Journal of Canada. 34: p. 123–1777.
12. EPA (2005). *Ambient Aquatic Life Water Quality Criteria—Nonylphenol Final.* (EPA–822–R–05–005).
13. Canada (2002). *Canadian Environmental Quality Guidelines for Nonylphenol and its Ethoxylates (Water, Sediment, and Soil) Scientific Supporting Document.* Ecosystem Health: Science-Based Solutions Report. No. 1–3.
14. Balaguer, P., Franois, F., Comunale, F., Fenet, H., Boussioux, A.M., Pons, M., Nicolas, J.C., and Casallas, C. (1999). *Reporter cell lines to study the estrogenic effects of xenoestrogens.* Science Total Environment. 233: p. 47–56.
15. Blair, R.M., Fang, H., Branham, W.S., Hass, B.S., Dial, S.L., Moland, C.L., Tong, W., Shi, L., Perkins, R. and Sheehan, D.M. (2000). *The estrogen receptor relative binding affinities of 188 natural and xenochemicals: Structural diversity of ligands.* Toxicological Sciences. 54(138–153).
16. Bonefeld-Jørgensen, E., Long, M, Hofmeister, M.V., and Vinggaard, A.M. (2007). *Endocrine-Disrupting Potential of Bisphenol A, Bisphenol A Dimethacrylate, 4-n-Nonylphenol, and 4-n-Octylphenol in Vitro: New Data and a Brief Review.* Environmental Health Perspectives. 115(S–1): p. 69–76.

17. Danzo, B.J. (1997). *Environmental xenobiotics may disrupt normal endocrine function by interfering with the binding of physiological ligands to steroid receptors and binding proteins.* Environmental Health Perspectives. 105(3): p. 294–301.
18. Legler, J., Van Den Brink, C.E., Brouwer, A., Murk, A.J., Van Der Saag, P.T., Vethaak, A.D., and Van Der Burg, B. (1999). *Development of a stably transfected estrogen receptor-mediated luciferase reporter gene assay in the human T47D breast cancer cell line.* Toxicological Sciences. 48(55–66).
19. Satoh, K., Nagai, F., and Aoki, N. (2001). *Several environmental pollutants have binding affinities for both androgen receptor and estrogen receptor.* Journal of Health Science. 47(5): p. 495–501.
20. White, R., Jobling, S., Hoare, S., Sumpter, J., and Parker, M. (1994). *Environmentally persistent alkylphenolic compounds are estrogenic.* Endocrinology. 135(1): p. 175–182.
21. Lee, H., Chattopadhyay, Soma, Gong, Eun-Yeung, Ahn, Ryun Sup, and Lee, Keesook (2003). *Antiandrogenic Effects of Bisphenol A and Nonylphenol on the Function of Androgen Receptor.* Toxicological Sciences. 75: p. 40–45.
22. Gong, Y., Han, X.D. (2006). *Effect of nonylphenol on steroidogenesis of rat Leydig cells.* Journal of Environmental Science and Health. 41(5): p. 705–15.
23. Kortner, T., Vang, S.H., Arukwe, A. (2009). *Modulation of salmon ovarian steroidogenesis and growth factor responses by the xenoestrogen, 4-nonylphenol.* Chemosphere. 77(7): p. 989–98.
24. RTI-International (2007). *Characterization of the inhibition of aromatase activity by nonylphenol.* EPA Task Order 3. p. 158.
25. SEPA (2010). *Scottish Pollutant Release Inventory; Pollutant Fact Sheet, Nonylphenol Ethoxylates.* Scottish Environment Protection Agency.
26. Ahel, M., and Giger, W. (1993). *Aqueous Solubility of Alkylphenols and Alkyphenol Polyethoxylates.* Chemosphere. 26(8): p. 1461–1470.
27. Brix, R., Hvidt, S., and Carlsen, L. (2001). *Solubility of Nonylphenol and Nonylphenol Ethoxylates: On the Possible Role of Micelles.* Chemosphere. 44: p. 759–763.
28. Ahel, M., Giger, W., and Schaffner, C. (1994). *Behaviour of alkylphenol polyethoxylate surfactants in the aquatic environment—II. Occurrence and transformation in rivers.* Water Research. 28(5): p. 1143–1152.
29. Kvestak, R., Terzic, S., and Ahel, M. (1994). *Input and distribution of alkylphenol polyethoxylates in a stratified estuary.* Marine Chemistry. 46(1–2): p. 89–100.
30. Sekela, M., Brewer, R., Moyle, G., and Tuominen, T. (1999). *Occurrence of an environmental estrogen (4-nonylphenol) in sewage treatment plant effluent and the aquatic receiving environment.* Water Science and Technology. 39(10–11): p. 217–220.
31. John, D.M., House, W.A., and White, G.F. (2000). *Environmental fate of nonylphenol ethoxylates: Differential adsorption of homologs to components of river sediment.* Environmental Toxicology and Chemistry. 19(2): p. 293–300.
32. Jonkers, N., Knepper, T.P., and De Voogt, P. (2001). *Aerobic Biodegradation Studies of Nonylphenol Ethoxylates in River Water Using Liquid Chromatography-Electrospray Tandem Mass Spectrometry.* Environ. Sci. Technol. 35(2): p. 335–340.
33. Giger, W., Brunner, P.H., and Schaffner, C. (1984). *4-Nonylphenol in sewage sludge: accumulation of toxic metabolites from non ionic surfactants.* Science. 225: p. 623–625.
34. Ellis, D.D., Jones, C.M., Larson, R.A., and Schaeffer, D.J. (1982). *Organic constituents of mutagenic secondary effluents from wastewater treatment plants.* Archives of Environmental Contamination and Toxicology. 11: p. 373–382.
35. Naylor, C.G., Mieure, J.P., Adams, W.J., Weeks, J.A., Castaldi, F.J., Ogle, F.D., and Romano, R.R. (1992). *Alkylphenol ethoxylates in the environment.* Journal of the American Oil Chemists' Society. 69: p. 695–708.
36. Bennett, E.R., and Metcalf, C.D. (1997). *Distribution of Alkylphenol Compounds in Great Lakes Sediments.* Environmental Toxicology and Chemistry. 17(7): p. 1230–1235.
37. Shackelford, W.M., Cline, D.M., Faas, L., and Kurth, G. (1983). *Evaluation of automated spectrum matching for survey identification of wastewater components by gas chromatography-mass spectrometry.* National Technical Information Service. (PB83–182931).
38. Rice, C.P., Schmitz-Afonso, I., Loyo-Rosales, J.E., Link, E., Thoma, R., Fay, L, Altfater, D., and Camp, M.J. (2003). *Alkylphenol and Alkylphenol-Ethoxylates in Carp, Water, and Sediment from the Cuyahoga River, Ohio.* Environ. Sci. Technol. 37(17): p. 3747–3754.
39. Ferrey, M. (2013). *Pharmaceuticals and Endocrine Active Chemicals in Minnesota Lakes.* Minnesota Pollution Control Agency.
40. EPA (2014). *Economic Analysis of the Significant New Use Rule for Nonylphenols (NPs) and Nonylphenol Ethoxylates (NPEs).*

XIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

The Office of Management and Budget (OMB) has determined that is proposed SNUR is not a ''significant regulatory action,'' under section 3(f) of Executive Order 12866 (58 FR 51735, October 4, 1993). Accordingly, this action was not submitted to OMB for review under Executive Order 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C. 3501 *et seq.* Burden is defined in 5 CFR 1320.3(b). The information collection activities associated with existing chemical SNURs are already approved by OMB under OMB control number 2070–0038 (EPA ICR No. 1188); and the information collection activities associated with export notifications are already approved by OMB under OMB control number 2070–0030 (EPA ICR No. 0795). If an entity were to submit a SNUN to the Agency, the annual burden is estimated to be less than 100 hours per response, and the estimated burden for an export notifications is less than 1.5 hours per notification. In both cases, burden is estimated to be reduced for submitters who have already registered to use the electronic submission system.

C. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the RFA, 5 U.S.C. 601 *et seq.,* the Agency hereby certifies that promulgation of this SNUR would not have a significant economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows.

A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' By definition of the word ''new'' and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since this SNUR will require a person who intends to engage in such activity in the future to first notify EPA by submitting a SNUN, no economic impact will occur unless someone files a SNUN to pursue a significant new use in the future or forgoes profits by avoiding or delaying the significant new use. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemical substances, the Agency receives only a handful of notices per year. During the six year period from 2005–2010, only three submitters self-identified as small in their SNUN submission. EPA believes the cost of submitting a SNUN is relatively small compared to the cost of developing and marketing a chemical new to a firm and that the requirement

to submit a SNUN generally does not have a significant economic impact.

Therefore, EPA has determined that the potential economic impact of complying with this SNUR is not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published as a final rule on August 8, 1997 (62 FR 42690) (FRL–5735–4), the Agency presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reason to be of the opinion that any State, local, or Tribal government would be impacted by this rulemaking. As such, EPA has determined that this regulatory action would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of UMRA, 2 U.S.C. 1531–1538.

E. Executive Order 13132: Federalism

This action will not have a substantial direct effect on States, on the relationship between national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have Tribal implications because it is not expected to have any effect (i.e., there will be no increase or decrease in authority or jurisdiction) on Tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000) do not apply to this rulemaking.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this action is not intended to address environmental health or safety risks affecting children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act (NTTAA)

Since this action does not involve any technical standards, section 12(d) of the NTTAA, 15 U.S.C. 272 note, does not apply to this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This proposed rule does not entail special consideration of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994) because EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This action does not affect the level of protection provided to human health or the environment.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 24, 2014.

Wendy C. Hamnett,

Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Add § 721.10765 to subpart E to read as follows:

§ 721.10765 Nonylphenols and nonylphenol ethoxylates.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances listed in Table 1 and Table 2 of this section are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) For the chemical substances listed in Table 1 of this section, any use.

(ii) For the chemical substances listed in Table 2 of this section, any use other than as an intermediate or an epoxy cure catalyst.

TABLE 1—NP AND NPE CHEMICAL SUBSTANCES SUBJECT TO REPORTING ANY USE

Chemical name	Chemical abstracts index name	Chemical Abstracts Service Registry No. (CASRN)	NP or NPE
4-nonylphenol	Phenol, 4-nonyl-	104–40–5	NP
2-[2-[2-[2-(4-nonylphenoxy)ethoxy]ethoxy]ethoxy]ethanol	Ethanol, 2-[2-[2-[2-(4-nonylphenoxy)ethoxy]ethoxy]ethoxy]-.	7311–27–5	NPE
α(Nonylphenyl)-ω-hydroxy-poly(oxy-1,2-ethanediyl)	Poly(oxy-1,2-ethanediyl), α(nonylphenyl)-ω-hydroxy-	9016–45–9	NPE
2-[2-(4-nonylphenoxy)ethoxy]ethanol	Ethanol, 2-[2-(4-nonylphenoxy)ethoxy]-	20427–84–3	NPE
Nonylphenol	Phenol, nonyl-	25154–52–3	NP
α-(4-Nonylphenyl)-ω-hydroxy-poly(oxy-1,2-ethanediyl)	Poly(oxy-1,2-ethanediyl), α-(4-nonylphenyl)-ω-hydroxy-	26027–38–3	NPE
2-[2-[2-[2-[2-[2-[2-[2-(Nonylphenoxy)ethoxy]ethoxy]ethoxy]ethoxy]ethoxy]ethoxy]ethoxy]ethanol.	3,6,9,12,15,18,21,24-Octaoxahexacosan-1-ol, 26-(nonylphenoxy)-.	26571–11–9	NPE
2-[2-(Nonylphenoxy)ethoxy]ethanol	Ethanol, 2-[2-(nonylphenoxy)ethoxy]-	27176–93–8	NPE
2-[2-[2-[2-[2-[2-[2-[2-(nonylphenoxy)ethoxy]ethoxy]ethoxy]ethoxy]ethoxy]ethoxy]ethanol.	3,6,9,12,15,18,21-Heptaoxatricosan-1-ol, 23-(nonylphenoxy)-.	27177–05–5	NPE

TABLE 1—NP AND NPE CHEMICAL SUBSTANCES SUBJECT TO REPORTING ANY USE—Continued

Chemical name	Chemical abstracts index name	Chemical Abstracts Service Registry No. (CASRN)	NP or NPE
2-[2-[2-[2-[2-[2-[2-[2-[2-(nonylphenoxy)ethoxy]ethoxy]ethoxy]ethoxy]ethoxy]ethoxy]ethoxy]ethoxy]ethanol.	3,6,9,12,15,18,21,24,27-Nonaoxanonacosan-1-ol, 29-(nonylphenoxy)-.	27177–08–8	NPE
2-(Nonylphenoxy)ethanol	Ethanol, 2-(nonylphenoxy)-	27986–36–3	NPE
α-(Isononylphenyl)-ω-hydroxy-poly(oxy-1,2-ethanediyl)	Poly(oxy-1,2-ethanediyl), α-(isononylphenyl)-ω-hydroxy-	37205–87–1	NPE
α-(2-Nonylphenyl)-ω-hydroxy-poly(oxy-1,2-ethanediyl),	Poly(oxy-1,2-ethanediyl), α-(2-nonylphenyl)-ω-hydroxy-	51938–25–1	NPE

TABLE 2—NP AND NPE CHEMICAL SUBSTANCES SUBJECT TO REPORTING ANY USE OTHER THAN AS AN INTERMEDIATE OR AN EPOXY CURE CATALYST

Chemical name	Chemical abstracts index name	Chemical Abstracts Service Registry No. (CASRN)	NP or NPE
4-nonylphenol, branched	Phenol, 4-nonyl-, branched	84852–15–3	NP
2-nonylphenol, branched	Phenol, 2-nonyl-, branched	91672–41–2	NP

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Persons who must report.* Section 721.5 applies to this section except § 721.5(a)(2).

A person who intends to manufacture, import, or process for commercial purpose a substance identified in paragraph (a)(2)(i) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved]

[FR Doc. 2014–23253 Filed 9–30–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R7–ES–2014–0043; 4500030113]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Yellow-Billed Loon as an Endangered or a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the yellow-billed loon (*Gavia adamsii*) as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After reviewing the best scientific and commercial data available we find that listing the yellow-billed loon is not warranted. We invite the public to submit to us any new information that becomes available concerning the threats to the yellow-billed loon or its habitat.

DATES: The finding announced in this document was made on October 1, 2014.

ADDRESSES: This finding and the Yellow-billed Loon Species Status Assessment Report (SSA Report; Service 2014, entire; see Status Assessment for the Yellow-billed Loon section, below) is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R7–ES–2014–0043.

Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Fairbanks Fish and Wildlife Office, 101 12th Ave., Room 110, Fairbanks, AK 99701. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Sarah Conn, Field Supervisor, Fairbanks Fish and Wildlife Office (see **ADDRESSES**); telephone at 907–456–0499; or facsimile at 907–456–0208. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In the finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

On April 5, 2004, we received a petition from the Center for Biological Diversity, Natural Resources Defense Council, Pacific Environment, Trustees for Alaska, Kaira Club, Kronotsky Nature Preserve, Taiga Rangers, Yuzhno-Sakhalinsk Local Public Fund, Interregional Public Charitable Organization of Far Eastern Resource Centers, Kamchatka Branch of Pacific Institute of Geography (Petropavlovsk-Kamchatsky, Russia), and Kamchatka League of Independent Experts to list the yellow-billed loon as an endangered or threatened species throughout its

range, or as a distinct population segment (DPS) in the United States, and to designate critical habitat once listed.

In response to the petition, we published a 90-day finding on the yellow-billed loon in the **Federal Register** on June 6, 2007 (72 FR 31256). In the 90-day finding, we determined that the petition presented substantial scientific or commercial information to indicate that a listing may be warranted and announced that a status review would be promptly commenced. In that document, we announced the opening of a 60-day information collection period and invited the public to submit to us any pertinent information concerning the status of or threats to this species. We received approximately 28,000 comments during the information collection period. We also consulted with recognized yellow-billed loon experts and other Federal and State agencies. We sent letters to national wildlife or natural resource agencies in Canada, China, Japan, North Korea, Norway, Republic of Korea (South Korea), and the Russian Federation, asking for information about ongoing management measures and any conservation and management strategies being developed to protect the species. We received a formal response from the government of Canada, and an informal response from a government biologist in the Russian Federation.

On June 11, 2007, we received a 60-day notice of intent to sue from the Center for Biological Diversity alleging a violation of section 4 of the Act for failure to complete a 12-month finding on the petition. We informed the plaintiffs by letter dated July 9, 2007, that further action on the petition was precluded by higher priority listing actions but that, pending the Fiscal Year 2008 allocation of funds, we hoped to complete the 12-month finding within that fiscal year. On December 19, 2007, the Center for Biological Diversity filed a complaint alleging that the Service had failed to make a timely 12-month finding on the petition, as required under section 4 of the Act. Consistent with a settlement agreement reached between the Service and the Center for Biological Diversity, the Court ordered the Service to submit a 12-month finding for publication to the **Federal Register** by February 15, 2009. Because the Service later received substantial new information to be evaluated and considered in the 12-month finding, we subsequently sought and were granted a 1-month extension with a new deadline of March 16, 2009. On March 25, 2009, we published our 12-month finding (74 FR 12932), in which we stated the best scientific data available to us indicated that during migration, yellow-billed loons were subject to subsistence harvest that appeared to be at an unsustainable level for the species (74 FR 12962), and concluded that listing the yellow-billed loon as an endangered or threatened species under the Act was warranted, but precluded by higher listing priorities. With the publication of the finding the yellow-billed loon became a candidate for listing and was added to the list of species annually reviewed under the candidate notice of review (CNOR).

As part of the multi-district litigation stipulated settlement agreements (*WildEarth Guardians* v. *Salazar,* No. 1:10–mc–00377–EGS (D.D.C.); *Center for Biological Diversity* v. *Salazar,* No. 1:10–mc–00377–EGS (D.D.C.)), we are required to submit a proposed listing rule or not-warranted finding to the **Federal Register** for the yellow-billed loon in Fiscal Year 2014, which ends September 30, 2014. This document constitutes our 12-month finding as specified in the agreement.

Status Assessment for the Yellow-Billed Loon

Introduction

In the SSA report we compiled biological data and a description of past, present, and likely future stressors (causes and effects) facing the yellow-billed loon. We consider this SSA report to represent a compilation of the best available scientific and commercial data regarding the biological condition of the yellow-billed loon, and it provides the scientific basis that has informed our regulatory decision as set forth in this document.

Summary of Life History, Biological Status and Threats

Life History

Yellow-billed loon (Order Gaviiformes, Family Gaviidae) is one of five loon species (*Gavia* spp.), and is most closely related to common loon (*G. immer*) with similarities in size and appearance. There are no recognized subspecies or geographic variations (American Ornithologists' Union, *http://checklist.aou.org/taxa/137,* accessed August 4, 2014). Yellow-billed loons are large-bodied, fairly long-lived birds with low annual reproductive output and therefore are dependent upon high annual adult survival to maintain populations. Based on common loon, individuals may reach sexual maturity at 3 years of age but not acquire breeding territories until later; the average age at first breeding for common loon is 6 years (Evers 2004, p. 18).

Yellow-billed loons nest from June to September on shores of coastal and inland low-lying tundra lakes from latitude 62 degrees to 74 degrees North. There are five separate breeding areas that are recognized, two each in Alaska and Canada and one in Russia. In Alaska, yellow-billed loons nest on the Arctic Coastal Plain (ACP) north of the Brooks Range and in the region surrounding Kotzebue Sound in western Alaska, primarily the northern Seward Peninsula (North 1993, pp. 38–42; Earnst 2004, pp. 3–4). In Canada, they nest on islands in the Arctic Ocean (hereafter ''Canadian arctic islands'') and on the mainland between the Mackenzie Delta and Hudson Bay. In Russia, they nest on a narrow strip of coastal tundra from the Chukotka Peninsula in the east and on the western Taymyr Peninsula in the west, with a break in distribution between these two areas (Il'ichev and Flint 1982, p. 277; North 1993, p. 42; Pearce *et al.* 1998, p. 369; Red Data Book of the Russian Federation 2001, p. 366; Ryabitsev 2001, p. 22; Earnst 2004, p. 3).

Yellow-billed loons typically nest on large, clear lakes with vegetated and convoluted shorelines. Females lay one or two eggs in mid- to late June (North 1994, pp. 11–12). Renesting after nest failure is limited by the short arctic summer and there appears to be significant inter-annual variation in reproductive success (ABR, Inc. 2007, p. 16). Because this species eats small fish and other aquatic prey (North 1994, p. 6), these lakes must also support sufficient numbers of prey fish. In many areas, successfully breeding adults feed their young almost entirely from the brood-rearing lake (North 1994, p. 14), although some may use additional lakes or the nearshore marine environment during brood rearing.

Yellow-billed loons depart breeding areas in late September, although non-breeders or failed nesters may start fall migration in July, and arrive in wintering locations in mid-November. In April, they begin spring migration, arriving on breeding grounds in the first half of June. Juveniles likely spend their first several years on wintering areas.

Yellow-billed loons that breed on Canadian arctic islands migrate along the arctic coast and through the Chukchi Sea to and from wintering areas in Asia, although at least some loons that nest inland in mainland Canada migrate overland to the coast of southern Alaska and British Columbia presumably via large lakes (Schmutz 2011, p. 1). Those breeding in Alaska predominantly winter in Asia, though some winter along the coast of southern Alaska and British Columbia. It is likely that some

or all yellow-billed loons that nest in eastern Russia migrate through the Bering Strait to Asian wintering areas, although there are no data to support this claim. The species winters in coastal waters of southern Alaska and British Columbia from the Aleutian Islands to Puget Sound; the Pacific coast of Asia from the Sea of Okhotsk south to the Yellow Sea; the Barents Sea and the coast of the Kola Peninsula; coastal waters of Norway; and possibly Great Britain and interior lakes or reservoirs in North America. See the SSA report section on Migratory Routes and Wintering Range for relevant details and citations (Service 2014).

Summary of Biological Status

We evaluated the biological status of the yellow-billed loon by collectively considering the species' geographic range, abundance estimates, and trend information from the Service's Migratory Bird Management annual aerial surveys of the Alaska-ACP breeding population. The global yellow-billed loon population is estimated to be 16,000 to 32,000, spread among the five breeding areas of Alaska-ACP, western Alaska, Canadian arctic islands, Canadian mainland, and Russia (see SSA report, Service 2014, for population-specific estimates). The Alaska-ACP breeding population is the only population for which standardized surveys over a sufficient number of years allow for estimation of a population trend. There, aerial surveys from 1986 to 2013 provide an index of abundance that was used to estimate a trend, using various subsets of observations that included or excluded exceptionally high and low counts, included all or just the most experienced observer, and included all years or just the most recent 10 years (Stehn *et al.* 2013, p. 23; Stehn *et al.* 2014, p. 3). Estimates varied slightly with analytical approach, but nearly all growth rates were estimated at about 1.01 (i.e., a 1 percent increase per year), although estimates based on only the last 10 years suggested growth rates of 6–7 percent per year. The most precise trend estimate, which included all years and all observations, estimated population growth to be 1.014, indicating an average annual increase of 1.4 percent (95 percent confidence interval: 1.001 to 1.027; Stehn *et al.* 2013, p. 23; Stehn *et al.* 2014, p. 3). From these results collectively, we conclude that the Alaska-ACP population is at minimum stable, but most likely increasing in abundance. This is a change from the situation we described in our 2009 finding, as the best scientific and commercial data available at that time indicated the Alaska-ACP population was stable or slightly declining (74 FR 12961, March 25, 2009).

Stressors Affecting Yellow-Billed Loons

Numerous stressors occur in the range of the yellow-billed loon and involve different stages of its life history. We evaluated the sources and potential effects of these stressors to yellow-billed loons at the individual level, and whenever supported by the best scientific and commercial data available considered the potential or known response at the population and species levels. We identified stressors as: Oil and gas exploration and development; collisions with structures; research; disease; predation; subsistence harvest; commercial fishing bycatch; pollution and degradation of marine habitats; and effects related to climate change. See the SSA report (Service 2014) for relevant details and citations for the information summarized below on various stressors.

For most individual stressors, it is difficult to evaluate population-level effects, especially for four of five breeding populations of the yellow-billed loon. As stated earlier, the Alaska-ACP population is the only breeding population for which we have sufficient data to estimate a population trend. Comparable data regarding population trend or stressors are not available for the other four breeding populations. Based on the best scientific and commercial data available, the Alaska-ACP population of yellow-billed loon is subject to all stressors identified for the species rangewide.

Oil and Gas Exploration and Development: Oil and gas exploration and development activities are occurring and are likely to continue to occur in portions of the yellow-billed loon's range including both marine and freshwater habitats. However, these activities are mostly localized and although individual yellow-billed loons may be affected, only a small proportion of the species' habitat has been subject to development to date. While oil and gas activities are likely to continue and may increase in scale, we expect that most breeding habitat will remain undeveloped in the short term. The greatest number of yellow-billed loons in potential oil and gas development areas occur in a part of the Alaska-ACP population breeding range where protective measures are in place (described below), and the proportion of affected individuals in the population is likely low. The best scientific and commercial data available do not suggest that the proportion of yellow-billed loon habitat occupied by oil and gas development will increase to the extent that population-level effects to this species will occur in the future.

In Alaska, oil and gas activities could occur in yellow-billed loon habitat in the National Petroleum Reserve-Alaska (NPR–A) or offshore on the Outer Continental Shelf (OCS); however, some measures aimed to minimize impacts to loons and other wildlife species currently are in place. In NPR–A, several best management practices designed to protect yellow-billed loons, their prey, and habitats including coastlines, lakes, and rivers/streams ameliorate potential impacts to terrestrial-based resources. On the OCS, permit requirements intended to minimize impacts to marine mammals, migratory birds, subsistence practices, and important marine wildlife habitat such as coastlines and spring-lead systems will also indirectly benefit yellow-billed loons. These measures are expected to significantly reduce potential impacts of oil and gas development-related activities occurring in these areas provided that they remain in place (see Conservation Measures in SSA report, Service 2014).

Oil and gas development and projected increased shipping in arctic waters create potential for in-water oil spills. Spill response capability remains unproven in arctic waters, indicating potential for exposure to yellow-billed loons if spills occur. While large spills from exploration and development could occur, such spills are expected to be unlikely based on spill rates observed elsewhere. In the event of an oil spill, individual yellow-billed loons would be affected if they were present at the time of the spill and came into contact with oil. However, with the exception of occasionally staging in groups in fall migration, yellow-billed loons generally occur in low densities in marine waters (North 1994, pp. 3–5; Gibson and Byrd 2007, p. 68); accordingly, the risk of a spill large enough to encounter a sufficient number of yellow-billed loons to result in a population- or species-level effect is low. Given the minimal development in offshore yellow-billed loon habitat, the low density at which the species occurs in marine waters, and the low probability of large spills occurring, we conclude that the potential for in-water oil spills does not rise to the level of a threat to yellow-billed loons at the population or species level.

Collisions with Structures: Some yellow-billed loons may be injured or die as a result of collisions with ships or other offshore or terrestrial structures. In an effort to reduce collision risks resulting from bird attraction to lighted

structures, Bureau of Ocean Energy Management requires that oil and gas vessels operating in the Alaska OCS minimize the use of high-intensity work lights, especially within the 20-meter (66-foot) bathymetric contour (USFWS 2012, p. 77). Although individual yellow-billed loons may occasionally collide with structures, we are aware of no actual reports of fatal collisions between yellow-billed loons and human-built structures. Of 214 bird-structure incidents at terrestrial or island facilities on Alaska's North Slope between 2000 and 2013, and 131 incidents at offshore facilities in the Beaufort and Chukchi seas in 2012, none involved yellow-billed loons (Service unpubl. monitoring records; Schroeder 2013, pp. 1, 3). Therefore, the best available scientific and commercial data indicate that collisions with structures do not pose population- or species- level threats to the yellow-billed loon.

Research, Disease, Predation: The best scientific and commercial data available do not indicate that yellow-billed loon populations or the species as a whole are subject to stressors from research activities, disease, or predation. Some individual yellow-billed loons have been injured (n=2) or killed (n=3) as a result of capture or satellite transmitter implantation, and nest survival rates decrease in response to researcher visits or adult capture efforts at nests (J. Schmutz, USGS, pers. comm.; Uher-Koch *et al.* 2014, pp. 13–16). However, only a very small proportion of yellow-billed loons and nests are subject to research activities, so the effects of these activities do not constitute a threat to the yellow-billed loon at the population or species level. No large disease-related mortality events have been documented for the yellow-billed loon, and the best scientific and commercial data available do not suggest that disease outbreaks will increase or will have more severe effects on individuals or populations of this species in the future. Nest predation is a natural occurrence, and therefore we assume that it occurs throughout the species' range, although it may be greater near areas of human settlement or presence if predator distribution is influenced by human activities. However, in Alaska, due to requirements implemented by Bureau of Land Management in the NPR–A, and State regulators and the oil industry elsewhere in Alaska's North Slope oilfields (see Conservation Measures in SSA report, Service 2014), we expect that anthropogenic influences on nest predation are unlikely to result in population-level effects to the yellow-billed loon in the future. In Canada and Russia, we are not aware of any management actions aimed to minimize nest predation of yellow-billed loons, and we possess no information as to whether nest predation is resulting in population-level effects to yellow-billed loons, or that it will in the future. Based on the best scientific and commercial data available, particularly the information that the Alaska-ACP population trend is stable or slightly increasing, we have no reason to assume these stressors are operating differently in other breeding populations, and we conclude that research, predation, or disease do not pose population- or species-level threats to the yellow-billed loon now or in the future.

Subsistence Harvest: In 2009, the Service published a warranted-but-precluded 12-month finding for yellow-billed loon (74 FR 12932, March 25, 2009). At the time, available harvest survey data suggested that a substantial number of yellow-billed loons were being harvested by subsistence hunters, particularly on St. Lawrence Island in the Bering Straits, where large numbers of yellow-billed loons migrate during spring and fall. The Service concluded that the reported level of harvest was unsustainable, and this was the primary basis for our 2009 finding (74 FR 12962, March 25, 2009).

Subsequent to the 2009 finding, the Service and our partners expanded efforts to better understand yellow-billed loon harvest, abundance, and distribution in the Bering Strait-Norton Sound region with the goal of evaluating the reliability of reported harvest. Based on these efforts, our current review of the best available data on yellow-billed loon subsistence harvest from harvest surveys indicates these data are subject to unquantifiable errors and biases that make it impossible to estimate subsistence harvest levels accurately. Issues identified for Alaskan harvest data also likely pertain to data from Canada (Priest and Usher 2004, pp. 35–42), and possibly to those from Russia. Despite errors in the harvest data, however, when survey estimates, local and traditional ecological knowledge, and ethnographic information are considered collectively, the available information suggests that anywhere from 10 to possibly a few hundred yellow-billed loons from multiple breeding and migration areas may be harvested annually by subsistence hunters across the species' range in Alaska, Canada, and Russia; this estimate is a small proportion of the global population estimate of 16,000 to 32,000 loons. Also, the best available information suggests that few eggs or adults are taken during the breeding season. Therefore, most harvest probably occurs during spring and fall migrations, as yellow-billed loons, including those nesting in mainland Canada, move along the coast of Alaska and Chukchi and Bering seas. We find no evidence of changes in harvest practices or the use of loons in terms of magnitude and frequency for subsistence over time. Thus, although the rangewide population of yellow-billed loon is subject to harvest, we conclude that hunters probably take a small number of loons relative to population- or species-level abundance. This assertion is supported by recent studies that found fewer yellow-billed loons appear to be harvested than previously thought in the Bering Strait-Norton Sound region (Naves and Zeller 2013, pp. 51–53). We note also that at the time of our 2009 finding the best scientific and commercial data available indicated the Alaska-ACP population trend was stable or slightly declining (74 FR 12961, March 25, 2009). In contrast, as described above and in the SSA report (Service 2014), new information indicates the Alaska-ACP population trend is stable or slightly increasing. Thus the subsistence harvest that is occurring is not resulting in a declining population.

In summary, as described in more detail in the SSA report (Service 2014), the best scientific and commercial data available indicate that: (1) Only a small proportion of the total rangewide population is harvested annually, and the effect is diffused across the species' range; (2) it is likely that the current stable or slightly increasing population trend on Alaska's ACP reflects population-level response to ongoing harvest levels; and (3) there is no evidence to suggest that increasing subsistence use of loons or changing harvest practices will result in the potential for population- or species-level impacts in the future. Therefore, based on our analysis of the best scientific and commercial data available, we conclude that the subsistence harvest is not a threat to the yellow-billed loon now or in the future.

Fishing Bycatch: Accidental bycatch of yellow-billed loons in commercial fisheries has been documented in Washington State, Russia, and Norway, but the frequency and magnitude of bycatch are unknown. Yellow-billed loons are also occasionally killed in subsistence fishing nets; however, little information is available regarding the number of yellow-billed loons caught in subsistence nets for most of Alaska, with the exception of the North Slope where fishers are required to report their

catch. Similar to other harvest data, the reported information is also subject to unquantifiable biases (e.g., low response rate). The North Slope Borough Department of Wildlife Management reported that 2 to 14 yellow-billed loons were killed in subsistence nets in Barrow annually from 2005 to 2010 (NSB–DWM 2006, p. 1; 2007, p. 1; 2008, p. 1; 2009, p. 1; 2010 p. 1; 2011, p. 1). An improved study design was developed and used in 2011 and 2012 in three villages (Barrow, Nuiqsut, and Atqasuk). The response rate for both years was high (approximately 97 percent), and the number of yellow-billed loons reportedly killed was 18 and 12, respectively (Sformo *et al.* 2012 p. 1; 2013, p. 1). However, data are lacking for other villages on the North Slope, elsewhere in Alaska, and across most of the species' range. Thus, we are unable to determine the level of bycatch for fisheries across the yellow-billed loon's range. Based on the stable or slightly increasing population on the Alaska-ACP, however, bycatch from fisheries is at a level that is not resulting in a population decline. Therefore, we conclude that bycatch in commercial and subsistence fisheries does not pose a threat to the yellow-billed loon, but acknowledge the value of additional bycatch data and the need to continue population monitoring.

Pollution and Degradation of Marine Habitat: Many yellow-billed loons, including the Alaska-ACP breeding population, winter in marine waters near Asia (Schmutz 2008, p. 1) that contain elevated concentrations of persistent environmental pollutants (Ma *et al.* 2001, pp. 133–134; Choi *et al.* 1999, p. 233). Asian sea sediments and biota, including fish and birds, have been documented with contamination, demonstrating potential exposure routes for wintering migratory birds such as yellow-billed loons (e.g., Guruge *et al.* 1997, pp. 186–193; Daoji and Daler 2004, pp. 107–113; Nie *et al.* 2005, pp. 537–546; Oh *et al.* 2005, pp. 217–222). Red-throated loons (*G. stellata*) that nest on the Alaska-ACP and winter near Alaska-ACP nesting yellow-billed loons in Asia showed polychlorinated biphenyls (PCB) concentrations great enough, when compared to thresholds determined for other species, to cause abnormal development or other reproductive defects (Schmutz *et al.* 2009, p. 2392). However, despite indications of potential risk, preliminary sampling on the Alaska-ACP found the most toxic individual PCB congeners (PCBs 77 and 81) found in red-throated loon eggs were not present in yellow-billed loon eggs, and yellow-billed loon eggs contained lower total toxic equivalents (a combined measure of toxicity for all 209 PCBs) (Hoffman *et al.* 1996, p. 191).

Recent sampling of yellow-billed loon tissues and comparison of historical with contemporary samples have been conducted to evaluate mercury exposure (Evers *et al.* 2014, entire document). Concentrations in blood during the breeding season, which were thought to reflect exposure in arctic breeding habitat, were below ''background levels'' (Evers *et al.* 2014, p. 153). However, concentrations in feathers and eggs, which presumably reflect exposure during winter in Asian marine waters, indicated that a small proportion (7 percent of individuals sampled) exceeded thresholds associated with reproductive effects in common loons (Evers *et al.* 2014, p. 155). Although mercury concentrations are predicted to increase (Evers *et al.* 2014, p. 155), and hence effects to yellow-billed loons may increase in future decades, in part due to thawing of permafrost (see discussion of climate change effects, below), we are not able to predict at this time the extent to which mercury concentrations will increase, the locations where the possible increased concentrations might occur, what level of exposure loons may experience, or whether increased exposure will impact loons to the point of contributing to a decline at the population or species level.

Because yellow-billed loons nesting in Canada, and some proportion of those nesting in Russia, likely winter in Asian seas or on the Pacific coast of North America, we assume that PCB and other persistent contaminant concentrations in their eggs would be comparable to those from the Alaska-ACP. Contaminant loading for yellow-billed loons wintering in the North Sea is unknown, but those loons represent a small proportion of the total population. Future exposure to pollutants, including mercury, may significantly increase in arctic marine habitats by 2050 (Sunderland *et al.* 2009, p. 12) or Asian marine waters where some yellow-billed loons winter (Evers *et al.* 2014, p. 155), possibly resulting in decreased productivity. However, at present we are unable to predict the rate or extent of increasing environmental contaminant loads or potential population- or species-level response of yellow-billed loons. Thus, the best scientific and commercial data available at this time do not indicate that pollution poses a threat to yellow-billed loons at the population or species level.

Climate Change Effects: Changes in climate have occurred and are likely to continue to occur in the range of the yellow-billed loon (e.g., Stewart *et al.* 2013, pp. 10–22; IPCC 2013, pp. 1257–1258, 1268–1271). Projections vary with season, geographic location, timeframe, and various assumptions related to future levels of greenhouse gases (GHGs) in the atmosphere (see IPCC 2013, pp. 19–29; Walsh *et al.* 2014, p. 897). Temperature, the most common measure of climate change, is projected to continue to increase in future decades in areas that encompass the range of the species (IPCC 2013, pp. 1278, 1282–1283; 1323). For example, across the region of northern Alaska that encompasses the Alaska-ACP, in comparison to 1971–1999 average annual temperatures are projected to increase 3.5–5.5 degrees F (1.9–3.1 degrees C) by 2021–2050, 5.5–7.5 degrees F (3.1–4.2 degrees C) by 2041–2070, and 9.5–13.5 degrees F (5.3–7.5 degrees C) by 2070–2099 (as compared to 1971–1999, under a scenario (''A2'') that is based on a set of conditions that would result in relatively high emissions of GHGs in future decades (Stewart *et al.* 2013, p. 26). Because changes in climate over the near term are highly influenced by the level of GHGs already in the atmosphere, temperature projections over the next few decades are very similar for all models and scenarios used; after about mid-Century, however, the magnitude and variance of projections vary increasingly over time due to differences in the underlying assumptions of different model scenarios about future conditions, i.e., uncertainty becomes greater over the longer term (e.g. see IPCC 2013, pp. 89, 1317–1319; 1323).

Although the mechanisms by which increasing temperatures may affect yellow-billed loons are becoming better understood as research, monitoring, and modeling associated with the effects of climate change in the arctic advance, there remains a great deal of imprecision and uncertainty around timing and magnitude of possible indirect and direct effects, either positive or negative, of increasing temperatures to yellow-billed loons. In terms of indirect effects, we expect increases in ship traffic in newly ice-free zones could result in increased hazards related to oil spills, disturbances, and collisions. We believe, however, that the widespread distribution and low density of yellow-billed loons on the marine seascape limit the potential for these stressors to affect yellow-billed loons at the population or species level. Further, although the effects of climate change may also influence stressors to yellow-

billed loons related to the type and distribution of diseases and predators, whether or how these stressors might be altered or impact loon populations is unknown and speculative at this time. Similarly, the thawing of permafrost linked to changing climate patterns could contribute to increased exposure of loons to mercury and possibly other contaminants (Evers *et al.* 2014, pp. 155–156), but this is another case in which the magnitude, rate, and location of thawing permafrost and impacts to loon populations are unclear and speculative at this time.

More directly, climate-change-induced habitat changes which may have effects on nesting loons as well as their prey, are ongoing (e.g., Arp *et al.* 2010, p. 1630) and are predicted to continue (see also discussion of this topic in the SSA Report (Service 2014)). The loss of lakes, currently saturated lake habitats, or lake-habitat characteristics needed by yellow-billed loons (especially shallow, vegetated shorelines and access to prey) may negatively affect the quantity or quality of nesting habitat in some areas. It is important to note, however, that lake formation and subsequent drainage is a natural process that has characterized large portions of the arctic for almost 12,000 years, since the end of the Pleistocene (see Jones and Grosse 2013, pp. 3–4 and citations therein). Lakes are numerous and cover extensive parts of the Arctic landscape (e.g., Jones and Grosse 2013, pp. 5–7). The effects of increasing temperatures on the distribution and abundance of lake habitat are likely to be quite variable because the vulnerability of an individual lake to drainage varies depending on the on ice content and ice distribution in the surrounding permafrost, various lake characteristics, the existence of a topographic gradient, and numerous external factors (e.g., presence or absence of nearby erosional features such as streams) (Jones and Grosse 2013, p. 3). Further, permafrost thawing due to warmer air temperatures could have varied results: Some lakes may expand and become suitable, continue to be suitable, or become more suitable for the loon; at some point in the future some expanding lakes could drain depending on conditions in the areas they eventually reach; and some currently suitable lakes may become become less suitable or even unsuitable. The timeframes over which changes may occur also are unclear and will vary to some extent based on local conditions. For example, projections of changes in permafrost due to changes in climate show some areas within the breeding range in Russia are expected to experience partial thawing, whereas other areas are projected to have relatively stable permafrost conditions over the 2020–2050 timeframe (Meleshko *et al.* 2008, p. 16).

Other changes associated with warmer temperatures, such as longer ice-free seasons and increased productivity in running and standing arctic freshwater systems (Prowse *et al.* 2006, pp. 353–357), may positively affect nesting habitat in some areas. In regions with discontinuous and shallow permafrost, vegetative succession near margins of receding lakes may cause permafrost aggradation, which could slow lake contraction and affect surface/ground water flux (Briggs *et al.* 2014, entire document), further complicating predictions for yellow-billed loon habitat change. It is possible that the type, distribution, and abundance of prey fish will also change, possibly with some positive effects to yellow-billed loons. However, additional information regarding potential response of yellow-billed loons and their prey to the effects of climate change is necessary to evaluate or reliably predict future impacts.

Based on the best scientific and commercial data available, the possible indirect and direct effects of climate change, including any effects associated with the increased temperatures observed over the past few decades, have not resulted in a declining trend of the Alaska-ACP population, which is stable or slightly increasing. In light of the current estimated abundance and distribution of the species, the ability to respond to stressors to date as reflected by the population trend data, the extensive area over which habitat occurs, and the mixture of direct and indirect effects that likely will include positive as well as negative aspects for the loon, we do not expect that effects related to climate change will pose a threat to the species in the near term. Over the longer term, the best scientific and commercial data currently available do not permit reliable predictions regarding type, timing, magnitude, or direction (positive or negative) of future effects, or how they will influence the distribution, abundance, and trend of yellow-billed loons at the population or species level.

Existing Regulatory Mechanisms: Russia is the only nation that includes the yellow-billed loon on an endangered or sensitive species list. The countries of Canada, Japan, Norway, Russia, and the United States have laws that prohibit the possession and hunting of migratory birds, such as the yellow-billed loon, unless specific regulations are issued, or unless the animals are harvested for subsistence. Lack of public knowledge of and compliance with regulations may limit their value in some regions or countries. For example, although the species is closed to subsistence hunting in Alaska, harvest surveys and anecdotal observations indicate some harvest continues to takes place, possibly resulting from misidentification or noncompliance with subsistence regulations. Additionally, bycatch from fishing activities also occurs (although at an unknown level), which is a violation of the Migratory Bird Treaty Act (16 U.S.C. 703–712), except in the North Slope region where possession for subsistence use of up to 20 yellow-billed loons per year inadvertently caught in subsistence nets may be kept (50 CFR 92).

The lack of knowledge of regulations in the United States by the subsistence community and the potential lack of regulation enforcement and knowledge in other countries may affect the yellow-billed loon at the individual level in some portions of its range. However, because we have not identified any stressor or combination of stressors that rises to the level of a threat to the yellow-billed loon, we do not consider the existing regulatory mechanisms to be inadequate either now or in the future.

Summary of Stressors: We identified oil and gas exploration and development, collisions with structures, degradation of marine habitats in migration and wintering areas, research activities, disease, predation, oil spills, subsistence activities, commercial fishing by-catch, pollution, and various possible effects related to changes in climate as stressors that may be, or are, affecting individual yellow-billed loons. The Alaska-ACP breeding population, for which we have the most information, is subject to all of these identified stressors. Since 1986, the Alaska-ACP breeding population has been characterized by a stable or increasing trend, and this trend reflects population-level response to all stressors to which the population is exposed. Therefore, we conclude that the identified stressors, acting individually and collectively, are not currently resulting in population-level effects that are causing a decline in the Alaska-ACP population, as the population trend is stable or slightly increasing. Although the best available information generally lacks the specificity needed to evaluate how exposure or response to stressors may vary across the species' broad range, we found no evidence to suggest that any stressor varies geographically in severity

or magnitude to such extent that differential response should be expected in other breeding populations.

Finding

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

The Act defines an endangered species as any species which is in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

As outlined above, we considered the five factors in assessing whether the yellow-billed loon meets the definition of an endangered or threatened species. We examined the best scientific and commercial data available regarding the past, present, and future threats faced by the yellow-billed loon. We reviewed the petition, information available in our files, other available published and unpublished information, and we consulted with recognized yellow-billed loon experts and other Federal, State, and tribal agencies. The Service and its partners worked specifically in the Bering Strait-Norton Sound region to understand subsistence hunting practices and harvest levels to elucidate previous concerns and inform interpretation of harvest survey reports. We also requested comments and information from all interested parties in each of our CNORs from 2010 to 2012, and in preparation for this finding. Additionally, we convened a 1-day meeting to coordinate with yellow-billed loon experts, exchange information, and discuss availability of new data since the 2009 finding.

To evaluate the status of the yellow-billed loon, we compiled and evaluated information regarding stressors faced by yellow-billed loons throughout their range and considered these stressors within the context of the five factors outlined in the Act. Below, we provide a summary of our evaluation for each factor, but refer the reader to the SSA report (Service 2014) for additional details on our analysis.

A key consideration in our evaluation is the time period over which we believe the best scientific and commercial data available provide a basis for reaching reasonable conclusions regarding the type, magnitude, and extent of stressors and the likely effects of stressors, considered individually and in combination, on populations and the species as a whole. Our ability to evaluate and reach conclusions regarding the likely response of the species to various stressors was influenced by consideration of climate change effects. Although we consider it essentially certain that temperatures will continue to increase in the face of a changing climate, the best scientific and commercial data available do not provide a basis for drawing long-term conclusions regarding whether or how increasing temperatures will alter various conditions in terms of direct and indirect effects on the yellow-billed loon, and whether or how any such altered conditions will result in positive or negative effects, how the effects may change over time, or population- or species-level responses.

Generally, projected increases in global average temperature are relatively similar across model scenarios for the near term (roughly the next 25–40 years), largely because GHGs already in the atmosphere have a substantial influence on changes in the next few decades. After about mid-century, however, the magnitude and rate of projected warming begins to depend more strongly on the scenario used for modeling and projections become increasingly different and have greater variance in out-years (IPCC 2013, p. 89), reflecting different assumptions regarding the future size of human populations, economic conditions, policy choices regarding sources and uses of energy, and other factors that influence the future level of GHGs in the atmosphere (e.g., see IPCC 2013, p. 89; Stewart *et al.* 2013, p. 7). This situation is made even more challenging due to uncertainty about the degree of exposure the yellow-bill loon will experience to various stressors, or how it will respond at a population or species level. Over the longer term, the best scientific and commercial data available do not permit reliable predictions on how future effects may manifest, or the timing, magnitude, or direction of these effects, or the likely response in terms of the distribution, abundance, and trend of yellow-billed loons at the population or species levels. Therefore, we conclude that the near term (roughly 25 to 40 years) is the appropriate timeframe to use as the foreseeable future for this particular finding.

Under Factor A (present or threatened destruction, modification, or curtailment of its habitat or range), our assessment showed that while some stressors may be impacting yellow-billed loon habitat now and in the foreseeable future, the impacts generally are expected to be localized and therefore affect loons at the individual level only. In general, yellow-billed loons occur throughout the year at low densities in remote terrestrial areas or marine waters where at most a small proportion of the landscape or seascape has been developed or is projected to be developed in the future. For example, although oil and gas development may render some habitat less suitable through various mechanisms, to date there has been minimal oil and gas development within the range of the yellow-billed loon, including Canada, Alaska, and Russia (Service 2014, p. 32). Thus, any potential effects of oil and gas exploration and development upon yellow-billed loon habitat have been minimal and are expected to continue to be so into the foreseeable future.

Many yellow-billed loons, including the Alaska-ACP population, winter in Asian marine waters with elevated concentrations of persistent environmental pollutants. Sampling of yellow-billed loons nesting on the Alaska-ACP, which presumably reflects exposure to environmental contaminants in Asian marine waters during winter, indicated minimal exposure to PCB congeners (Hoffman *et al.* 1996, p. 191). Sampling for mercury, also on the Alaska-ACP, found concentrations in blood at ''background levels,'' although concentrations in feathers and eggs indicated exposure commensurate with possible reproductive impairment for a small proportion of individuals (Evers *et al.* 2014, pp. 153–155). Contaminant concentrations, including mercury, are projected to increase in arctic (Sunderland *et al.* 2009, p. 12) and Asian (Evers *et al.* 2014, p. 155) marine waters in the future, which may result in decreased productivity of yellow-billed loons. Based on these projections, we are mindful of the need to monitor contaminant exposure and response of loons in the future and acknowledge that future changes in climate also could influence contaminants. However, we

currently are unable to predict the rate, magnitude, or extent of increasing environmental contaminant loads that might occur, or potential population- or species-level response. The best scientific and commercial data available do not indicate that pollution poses a threat to yellow-billed loons at the population or species level now or in the foreseeable future.

Similarly, while increasing temperatures and other climate changes are occurring and are expected to continue, predictive capabilities regarding the timing, magnitude, geographic scale, and possible effects of various impacts to habitat of the yellow-billed loon are quite limited, particularly over the long-term. The mechanisms through which climate changes will affect yellow-billed loon habitat (e.g., changes in suitability of lakes, including prey, for nesting and for rearing young), the timing of the changes, the proportion of habitat affected and whether or where effects will be positive or negative or changing between those, and the likely responses (positive, negative, or none) of the loon populations are unclear at this time. Given projections for impacts of climate change to arctic ecosystems, we acknowledge the need to improve predictive capabilities and apply them as appropriate to yellow-billed loon management over the longer term. We do know, however, that there are thousands of lakes within the breeding range of the species, and many that are suitable are likely to remain so in areas where permafrost thawing is not expected, or is expected to be limited in the foreseeable future. Further, although some currently suitable lakes will drain or otherwise become unsuitable as permafrost thaws in some locations it is likely that some lakes currently unsuitable for the loon will become suitable, and that some new lakes will form. In addition, the fact that the Alaska-ACP population trend has been stable to increasing since 1986 despite any climate-related effects in their habitat indicates the species has some capacity to respond and withstand such stressors. Thus, at this time, the best available information does not indicate that habitat effects related to climate changes in arctic or marine systems pose a threat to yellow-billed loon populations or the species rangewide now or in the foreseeable future.

Under Factor B (overutilization for commercial, recreational, scientific, or educational purposes), we are aware of limited use of yellow-billed loons (except use by subsistence hunters and incidental bycatch in subsistence and commercial fisheries, which are addressed under Factor E). The best available scientific and commercial information suggests few individual yellow-billed loons may be affected by research projects specifically studying yellow-billed loons, primarily in Alaska, but the limited scale of research projects indicates that population- or species-level impacts are implausible.

Similarly, we found that disease and predation under Factor C have limited potential for effecting yellow-billed loons at the population or species level, although certainly some individuals are impacted. It is hypothesized that predator abundance has increased near human settlements or industrial development sites such as oil and gas facilities, but we find no evidence that anthropogenic factors have elevated predation rates above natural rates, and we therefore conclude that potential for population- or species level effects is negligible. We have no basis for determining whether or how increasing air or water temperatures or other effects of climate change might alter disease or predation in a way that will result in negative impacts to loons at the population or species levels. We conclude disease or predation does not rise to the level of a threat to the yellow-billed loon now or in the foreseeable future.

Under Factor D (the inadequacy of existing regulatory mechanisms), we find that the existence of regulatory mechanisms, public awareness and compliance, and enforcement likely vary significantly across the species' broad range. Countless regulations exist that directly or indirectly provide benefit to yellow-billed loons, including those to protect terrestrial and marine habitat, reduce spills of oil and other contaminants, regulate harvest and fishing practices, minimize disturbance of wildlife, and others. We do not have evidence of population- or species-level response of yellow-billed loon to unmanaged or unregulated threats or anthropogenic impacts. Thus, we conclude that the existing regulations are adequate for this species now and in the foreseeable future.

Under Factor E (other natural or manmade factors affecting its continuing existence), we considered the effects of oil spills, collisions with human-built structures, subsistence hunting, and incidental bycatch in subsistence and commercial fishing. Large marine spills from oil exploration and development potentially could occur, but such spills are expected to be unlikely based on observed spill rates in Alaska and elsewhere and the scarcity of offshore development within the yellow-billed loon's range. Individual yellow-billed loons would be affected if they were present at the time of a spill and came into contact with oil, but yellow-billed loons generally occur in low densities in marine waters, so the risk of spills large enough or frequent enough to result in population- or species-level effects is very low. Although birds, particularly those migrating over water, occasionally collide with human-built structures such as offshore oil and gas facilities, we are aware of no records of yellow-billed loons doing so and conclude that collisions may pose an individual-level risk but do not threaten populations or the species rangewide, now or in the foreseeable future.

In 2009, the Service published a warranted-but-precluded 12-month finding for the yellow-billed loon (74 FR 12932, March 25, 2009), after concluding that subsistence harvest survey data indicated that hunting posed a threat to the species. Subsequently, the Service and its partners expanded efforts to improve understanding of harvest, particularly in the Bering Strait-Norton Sound region where high harvest was reported. Based on this new information, which includes local and traditional ecological knowledge and ethnographic information, we now conclude that only a small proportion of the total rangewide population is harvested annually; that harvest practices or use of loons have not changed or increased significantly, nor are they likely to do so in the foreseeable future; and that the current population trend of stable or increasing on the Alaska-ACP likely reflects population-level response to ongoing harvest levels. In contrast to interpretation in our 2009 finding, we now conclude, based on the best available scientific and commercial data, that subsistence harvest is not a threat to the yellow-billed loon at the population or species level, nor is it likely to become so in the foreseeable future.

We also evaluated bycatch in subsistence and commercial fisheries. In both cases, information is incomplete and subject to immeasurable bias, and, therefore, the overall magnitude of impact to yellow-billed loons from bycatch is unknown at this time. However, we find no evidence of extreme mortality levels, and the best scientific and commercial information does not suggest a population- or species-level effect, as evidenced by the stable to slightly increasing population trend on the Alaska-ACP.

In summary, our evaluation identified and evaluated a number of known and hypothetical stressors to yellow-billed

loons. In general, information on the stressors and potential or known response by yellow-billed loons is limited to the Alaska-ACP population. Because this species is broadly distributed within and across seasons, we expect that exposure and response of yellow-billed loons to identified stressors varies in time and space. However, for the other four breeding populations, we found little information on the occurrence, magnitude, and frequency of identified stressors, or on biological status or population trend. Despite the incomplete information, we have no information to suggest that status or trends in these populations differ from those in the Alaska-ACP population or should be expected to do so. Identified stressors to this species are not concentrated in any particular location, and the available information suggests that stressors to the species elsewhere are likely to be similar to those experienced by the species on the Alaska-ACP. Thus, for the purposes of this evaluation, we conclude that the Alaska-ACP population is representative of the other breeding populations of yellow-billed loon over the foreseeable future. As stated earlier, despite being exposed to numerous stressors, the Alaska-ACP breeding population has not declined in abundance over the past 28 years and is estimated to have had an average annual population increase of 1.4 percent per year since 1986. Therefore, we deduce, having no basis to conclude differently, that the other four breeding populations have stable or slightly increasing population trends as well. We also have no information indicating that status in any of the five breeding populations is likely to change within the foreseeable future.

Our review of the information pertaining to the five factors does not support the assertion that there are threats acting on the species or its habitat that rise to the level of causing the yellow-billed loon to be in danger of extinction (i.e., endangered) or likely to become so in the foreseeable future (i.e., threatened), throughout all or a significant portion of its range. Therefore, based on our review of the best available scientific and commercial data, we find that the yellow-billed loon does not meet the definition of an endangered or a threatened species under the Act, and listing is not warranted at this time.

Distinct Vertebrate Population Segment

Because we determined that the yellow-billed loon does not warrant listing throughout its range as an endangered or a threatened species, we next assess whether a distinct population segment (DPS) of the yellow-billed loon exists, and if so, whether it meets the definition of an endangered or a threatened species. Under the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act (61 FR 4722, February 7, 1996), three elements are considered in the decision concerning the establishment and classification of a possible DPS. These elements are discreteness of the population segment in relation to the remainder of the species to which it belongs; the significance of the population segment to the species to which it belongs; and the population segment's conservation status in relation to the Act's standards for listing (i.e., is the population segment, when treated as if it were a species, endangered or threatened?). This policy then allows vertebrate species to be subdivided into populations that can have different classifications under the Act so long as they meet the criteria for distinct population segments (i.e., they are discrete and significant). Subdividing a species into distinct population segments would be pointless, however, if all segments have the same status. Further, ascertaining heterogeneity in status requires adequate spatial resolution in the available information regarding the species' status and/or threats it faces.

In the case of the yellow-billed loon, we have found that the species does not meet the definition of an endangered or a threatened species across its range. Our analysis of the best scientific and commercial data available does not indicate that the species' populations trends, or threats that may affect populations, are substantially different in the five breeding populations or localized areas elsewhere within the species' range. Because we have not identified separate populations of yellow-billed loons that are likely to have different status under the Act, we have not, therefore, applied criteria for discreteness and significance to determine if the populations qualify as DPSs.

Significant Portion of the Range

Under the Act and our implementing regulations, a species may warrant listing if it is an endangered or a threatened species throughout all or a significant portion of its range. The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The term ''species'' includes ''any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' We published a final policy interpreting the phrase ''significant portion of its range'' (SPR) (79 FR 37578, July 1, 2014). The final policy states that (1) if a species is found to be an endangered or a threatened species throughout a significant portion of its range, the entire species is listed as an endangered or a threatened species, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is ''significant'' if the species is not currently an endangered or a threatened species throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service or the National Marine Fisheries Service makes any particular status determination; and (4) if a vertebrate species is an endangered or a threatened species throughout an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The SPR policy is applied to all status determinations, including analyses for the purposes of making listing, delisting, and reclassification determinations. The procedure for analyzing whether any portion is an SPR is similar, regardless of the type of status determination we are making. The first step in our analysis of the status of a species is to determine its status throughout all of its range. If we determine that the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range, we list the species as an endangered (or threatened) species and no SPR analysis will be required. If the species is neither an endangered nor a threatened species throughout all of its range, we determine whether the species is an endangered or a threatened species throughout a significant portion of its range. If it is, we list the species as an endangered or a threatened species, respectively; if it is not, we conclude that listing the species is not warranted.

When we conduct an SPR analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and either an endangered or a threatened species. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is an endangered or a threatened species throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are affecting it uniformly throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that clearly do not meet the biologically based definition of ''significant'' (i.e. the loss of that portion clearly would not be expected to increase the vulnerability to extinction of the entire species), those portions will not warrant further consideration.

If we identify any portions that may be both (1) significant and (2) endangered or threatened, we engage in a more detailed analysis to determine whether these standards are indeed met. The identification of a SPR does not create a presumption, prejudgment, or other determination as to whether the species in that identified SPR is an endangered or a threatened species. We must go through a separate analysis to determine whether the species is an endangered or a threatened species in the SPR. To determine whether a species is an endangered or a threatened species throughout an SPR, we will use the same standards and methodology that we use to determine if a species is an endangered or a threatened species throughout its range.

Depending on the biology of the species, its range, and the threats it faces, it may be more efficient to address the ''significant'' question first, or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is an endangered or a threatened species there; if we determine that the species is not an endangered or a threatened species in a portion of its range, we do not need to determine if that portion is ''significant.''

We examined the potential threats from the effects of oil and gas exploration and development, research, disease, predation, collisions with structures, subsistence harvest, commercial fishing bycatch, pollution and degradation of marine habitats, and effects from climate change. These stressors affect individual yellow-billed loons throughout their range. Our analysis of the best scientific and commercial data available does not suggest threats are concentrated or substantially greater in a specific area as compared to other areas of the species' range. Therefore, we find that factors affecting the yellow-billed loon are essentially uniform throughout its range, indicating no portion of the range warrants further consideration of possible endangered or threatened species status under the Act.

Conclusion of 12-Month Finding

Our review of the best scientific and commercial data available indicates that the yellow-billed loon is not in danger of extinction (an endangered species) nor likely to become endangered within the foreseeable future (a threatened species), throughout all or a significant portion of its range. Therefore, we find that listing the yellow-billed loon as an endangered or threatened species under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, the yellow-billed loon to our Fairbanks Fish and Wildlife Office (see **ADDRESSES**) whenever it becomes available. New information will help us monitor the status of yellow-billed loon and encourage its conservation. In the event that threats or the species' status changes, we could consider again whether it is appropriate to list the species as an endangered or a threatened species under the Act. We will continue to provide technical assistance to Federal, State, and other entities and encourage them to address the conservation needs of yellow-billed loon through collecting additional biological information, monitoring the status of the species, and monitoring the progress and efficacy of conservation efforts.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Fairbanks Fish and Wildlife Office (see **ADDRESSES**).

Authors

The primary authors of this notice are staff members of the Fairbanks Fish and Wildlife Office.

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 22, 2014.

Stephen Guertin,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2014–23297 Filed 9–30–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140828724–4724–01]

RIN 0648–BE23

Framework Action To Modify the Commercial Annual Catch Limit/Annual Catch Target Regulations for Three Individual Fishing Quota Species Complexes

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement a framework action to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Gulf) (Reef Fish FMP) to modify the commercial annual catch limit (ACL) and annual catch target (ACT) regulations for three individual fishing quota (IFQ) program species complexes in the Gulf, as prepared by the Gulf of Mexico Fishery Management Council (Council). If implemented, this rule would clarify that the established commercial quotas are equal to the commercial ACTs and would add commercial ACLs to the regulations for three IFQ species complexes: Other shallow-water grouper (Other SWG), deep-water grouper (DWG), and tilefishes. The purpose of this rule is to help achieve optimum yield for IFQ species in the Gulf, while preventing overfishing, in accordance with National Standard 1 of the Magnuson-Stevens Fishery Conservation and

Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received on or before October 16, 2014.

ADDRESSES: You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2014–0091'', by any of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0091,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the framework action, which includes a regulatory impact review and a Regulatory Flexibility Act analysis, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, telephone: 727–824–5305.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the fisheries for Gulf Reef Fish Resources, which includes the complexes for Other SWG, DWG, and tilefishes, under the Reef Fish FMP. Other SWG includes black grouper, scamp, yellowmouth grouper, yellowfin grouper; DWG includes warsaw grouper, snowy grouper, speckled hind, yellowedge grouper; and tilefishes include golden tilefish, blueline tilefish, and goldface tilefish. The Reef Fish FMP is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622. All weights specified in this rule are in gutted weight.

The framework action and this proposed rule would identify the commercial quotas for the Other SWG, DWG, and tilefishes complexes as equal to the commercial ACTs that were specified in the Generic Annual Catch Limit/Accountability Measures Amendment (Generic ACL Amendment) and add commercial ACLs to the regulations for these same three complexes. Currently, the regulations at 50 CFR 622.41, paragraphs (c)(1), (f)(1), and (g)(1), misidentify the commercial quotas for these three IFQ species complexes, which are codified at 50 CFR 622.39, as ACLs. The commercial quotas are actually equal to the ACTs. In June 2014, the Council took action to clarify that the quotas should remain equal to the ACTs. Therefore, this rulemaking proposes modifying the language in the regulations to identify the established quotas as ACTs, and to add the ACLs specified by the Generic ACL Amendment.

Specifically, this proposed rule would maintain the current quota values for these three IFQ species complexes in 50 CFR 622.39, ''Quotas'', and would remove the outdated quotas for 2012 and 2013 that are specified in this section. This proposed rule would also establish that the commercial quotas are equal to the commercial ACTs (instead of the ACLs) in 50 CFR 622.41, ''Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs)'', and add the commercial ACLs to 50 CFR 622.41.

Classification

Pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is consistent with the framework action, the FMP, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows.

This proposed rule would modify commercial ACL and ACT regulations for the DWG, Other SWG, and tilefishes, which are IFQ program species complexes in the Gulf. If implemented, the rule would clarify that the established commercial quotas are equal to the commercial ACTs and would add commercial ACLs to the regulations for the three species complexes. This clarification would not change the current commercial quotas and would therefore not affect current levels of landings.

An estimated 525 firms in the finfish fishing industry (NAICS 114111) own/operate vessels that may harvest species within three complexes. According to SBA Size Standards, a business in the finfish fishing industry (NAICS 114111) is a small business if its annual receipts are less than $20.5 million. It is expected that a substantial number of these firms may be small businesses.

The Generic ACL Amendment specified the commercial ACLs and quotas (ACTs) for the three species complexes; however, these ACLs are not specified in current regulations. According to the Generic ACL Amendment, the current (2014) commercial ACLs for the DWG, Other SWG, and tilefishes are 1.160 million lb (0.526 million kg), 545,000 lb (247,208 kg), and 606,000 lb (274,877 kg), respectively. According to current regulations, however, the 2014 commercial quotas and commercial ACLs for the DWG, Other SWG, and tilefishes complexes are 1.110 million lb (0.503 million kg), 523,000 lb (237,229 kg), and 582,000 lb (263,991 kg), respectively. The current regulations that implemented the Generic ACL Amendment misidentify the commercial ACLs as equal to the commercial quotas. After clarifying its intent, the Council voted to identify the commercial quotas as equal to the commercial ACTs and include the commercial ACLs from the Generic ACL Amendment in the regulations. The proposed rule would identify the commercial ACTs as equal to the commercial quotas and would specify the commercial ACLs in the regulations from the Generic ACL Amendment.

Annual commercial landings of the DWG, Other SWG, and tilefishes complexes would not be affected by this proposed rule because there would be no change in commercial quotas. Therefore, it is concluded that the proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf of Mexico, Individual fishing quota.

Dated: September 22, 2014.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.39, paragraphs (a)(1)(ii) and (a)(1)(iii)(A) are revised to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(ii) Deep-water groupers (DWG) have a combined quota, as specified in paragraphs (a)(1)(ii)(A) through (C) of this section. These quotas are specified in gutted weight, that is eviscerated, but otherwise whole.

(A) For fishing year 2014—1.110 million lb (0.503 million kg).

(B) For fishing year 2015—1.101 million lb (0.499 million kg).

(C) For fishing year 2016 and subsequent fishing years—1.024 million lb (0.464 million kg).

(iii) * * *

(A) *Other SWG combined.* (*1*) For fishing year 2014—523,000 lb (237,229 kg).

(*2*) For fishing year 2015 and subsequent fishing years—525,000 lb (238,136 kg).

* * * * *

■ 3. In § 622.41, paragraphs (c)(1), (f)(1), and (g)(1) are revised to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(c) * * *

(1) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial Other SWG. The commercial ACT for Other SWG is equal to the applicable quota specified in § 622.39(a)(1)(iii)(A). The commercial ACL for Other SWG, in gutted weight, is 545,000 lb (247,208 kg) for 2014, and 547,000 lb (248,115 kg) for 2015 and subsequent fishing years.

* * * * *

(f) * * *

(1) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial DWG. The commercial ACT for DWG is equal to the applicable quota specified in § 622.39(a)(1)(ii). The commercial ACL for DWG, in gutted weight, is 1.160 million lb (0.526 million kg) for 2014, 1.150 million lb (0.522 million kg) for 2015, and 1.070 million lb (0.485 million kg) for 2016 and subsequent fishing years.

* * * * *

(g) * * *

(1) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial tilefishes. The commercial ACT for tilefishes is equal to the quota specified in § 622.39(a)(1)(iv). The commercial ACL for tilefishes, in gutted weight, is 606,000 lb (274,877 kg).

* * * * *

[FR Doc. 2014–23246 Filed 9–30–14; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 79, No. 190

Wednesday, October 1, 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–2013–0064]

Concurrence With OIE Risk Designations for Bovine Spongiform Encephalopathy

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to concur with the World Organization for Animal Health's (OIE) bovine spongiform encephalopathy (BSE) risk designations for 15 regions. The OIE recognizes these regions as being of either negligible risk for BSE or of controlled risk for BSE. We are taking this action based on our review of information supporting the OIE's risk designations for these regions.

FOR FURTHER INFORMATION CONTACT: Dr. Silvia Kreindel, Senior Staff Veterinarian, Regionalization Evaluation Services, National Import Export Services, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 851–3300.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 92 subpart B, ''Importation of Animals and Animal Products; Procedures for Requesting BSE Risk Status Classification With Regard to Bovines'' (referred to below as the regulations), set forth the process by which the Animal and Plant Health Inspection Service (APHIS) classifies regions for bovine spongiform encephalopathy (BSE) risk. Section 92.5 of the regulations provides that all countries of the world are considered by APHIS to be in one of three BSE risk categories: Negligible risk, controlled risk, or undetermined risk. These risk categories are defined in § 92.1. Any region that is not classified by APHIS as presenting either negligible risk or controlled risk for BSE is considered to present an undetermined risk. The list of those regions classified by APHIS as having either negligible risk or controlled risk can be accessed on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml*. The list can also be obtained by writing to APHIS at National Import Export Services, 4700 River Road Unit 38, Riverdale, MD 20737.

Under the regulations, APHIS may classify a region for BSE in one of two ways. One way is for countries that have not received a risk classification from the World Organization for Animal Health (OIE) to request classification by APHIS. The other way is for APHIS to concur with the classification given to a country by the OIE.

If the OIE has recognized a country as either BSE negligible risk or BSE controlled risk, APHIS will seek information to support our concurrence with the OIE classification. This information may be publicly available information, or APHIS may request that countries supply the same information given to the OIE. APHIS will announce in the **Federal Register**, subject to public comment, its intent to concur with an OIE classification.

In accordance with that process, we published a notice [1] in the **Federal Register** on December 4, 2013 (78 FR 72859–72860, Docket No. APHIS–2013–0064), in which we announced our intent to concur with the OIE risk designations for 15 regions. In the notice we mistakenly stated that we intended to concur with the risk designations for 14 regions; the correct number is 15. The regions listed in the notice, however, were correct. The OIE recognizes these regions as being of either negligible risk for BSE or of controlled risk for BSE. We solicited comments on the notice for 60 days ending on February 3, 2014. We received three comments by that date, from two private citizens and a foreign industry association.

One commenter expressed general concern that the risk designations did not accurately reflect the actual risk of BSE, but the commenter did not address the specific details of the OIE process or of any region's designation. Another commenter expressed concern that the OIE process is not transparent and there is insufficient detail in the OIE summaries to make an adequate determination of BSE risk. This commenter stated that APHIS should undertake its own assessment of BSE status rather than accepting the OIE risk designation.

The summaries are the only information the OIE makes publicly available. Countries may make their BSE dossiers publicly available, in whole or in part, or they may share their dossiers with other countries upon request. For this reason, before announcing our intent to concur with the OIE classification, APHIS verifies that the information can be provided to us, or is publicly available, for review to support our concurrence with the OIE classification. APHIS' intention is to follow the OIE's BSE guidelines while ensuring that OIE-recognized countries apply adequate BSE risk mitigation measures assuring that bovines and bovine commodities destined for export pose a negligible risk for BSE, and that the country complies with OIE requirements for the specific BSE country recognition. If the information is not publicly available and the country does not provide the information, then we will not recognize the country's BSE status. APHIS thus has greater confidence in the outcomes of the evaluations and will have the necessary documentation to support or defend recognition decisions. The process we use is described in the regulations in § 92.5.

The information provided in the OIE dossier is more comprehensive than what appears in the summaries of the OIE Scientific Commission, and includes information about the likelihood that the disease could have been introduced into the country though the importation of bovine or bovine commodities in the last 7 years, the likelihood that the agent could have been recycled in as meat-and-bone meal or greaves for the last 8 years, the awareness, notification and laboratory capabilities of the region, BSE surveillance in the region, and the history of BSE in the region.

One commenter stated that, according to the OIE summary reports, the evaluation for Brazil was provided by the OIE in February 2012. The commenter also stated that in December

[1] To view the notice and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0064*.

2012, it was learned that a cow from Brazil that was sampled for testing in December 2010 tested positive for BSE. The commenter noted that immunohistochemistry (IHC) tests were not completed until June 2012, and it was another 6 months before a confirmatory test was completed at the Community Reference Laboratory in Weybridge, United Kingdom. The commenter stated that the lack of specific information regarding the OIE evaluation of the surveillance system made it difficult to determine if this was a one-time error or a failure of the system.

APHIS agrees that the delays in the testing and reporting of the atypical BSE case detected in Brazil were problematic. In response to these concerns, the OIE Scientific Commission requested that Brazil provide all relevant information for their meeting in February 2013. At that meeting, the OIE Scientific Commission affirmed that the identification of this single case of BSE did not put Brazil's or its trading partners' animal and public health at risk because the animal was destroyed and no parts of it had entered the food or feed chain. However, the OIE was also concerned about the delay before Brazil sent the clinical samples for a confirmatory diagnosis and requested more detailed information on the procedures for processing samples and the improvement of the surveillance system in the country, so that they could further monitor compliance by Brazil with international standards.[2] At a subsequent meeting in September 2013, the OIE assessed the additional information provided by Brazil.[3] The OIE was satisfied with the evidence submitted but also concluded that Brazil should submit the results of the proficiency tests conducted for 2013 to the OIE as soon as they became available.

In addition, representatives of APHIS and the United States Department of Agriculture's Food Safety and Inspection Service visited Brazil in February 2013 to evaluate the BSE laboratory infrastructure, emergency response, and BSE-related mitigations at the slaughter level. APHIS' review of the epidemiological and laboratory reports, including the report from the confirmatory tests conducted at Weybridge, shows that Brazil's first BSE case was most consistent with the atypical form of the disease. In addition, as a result of the delays in testing and reporting of this case, Brazil's Ministério da Agricultura, Pecuária e Abastecimento conducted audits of the laboratories to identify areas for change and improvement, and has implemented several new procedures to assure the timely testing of samples and reporting of results. Corrective actions include addition of a second lab to conduct IHC tests, expansion of testing capabilities to include Western Blot, and the development of an inter-laboratory data management system which will issue reports, record improper samples, and flag delays in sample receipt, completion, and notification of test results. Samples will be forwarded for IHC testing immediately after the immunofluorescence test for rabies is completed, rather than waiting for the animal inoculation tests to be completed.

We note that Brazil detected a suspected case of BSE in a 12-year-old cow in April 2014. The Brazilian authorities carried out the required epidemiological investigation in accordance with OIE guidelines. In May 2014, tests at the OIE reference laboratory in Weybridge confirmed that it was an atypical case of BSE.

Brazil still meets the criteria for a negligible risk region. In Article 11.5.3 of the Terrestrial Animal Health Code, the OIE requires, among other things, that if there has been an indigenous case of BSE in a region, every indigenous case was born more than 11 years ago. The cow in which BSE was detected was over 11 years of age. Therefore, this most recent case will not affect Brazil's negligible risk status.

One commenter stated that India should be included in the list of regions of negligible risk for BSE.

Our review of information in support of concurrence with the OIE designation for India is ongoing; we have requested the OIE dossier but have not yet received it. When our review is complete, if the findings support concurrence with the OIE designation, we will publish a notice in the **Federal Register** announcing our preliminary concurrence with the OIE's designation for India and provide the public with an opportunity to comment.

One commenter stated that the United States should be included on this list of regions of negligible risk for BSE because some raw material may be exported from the United States and then reimported after processing abroad.

When APHIS assesses the disease status of a region, it is to determine whether imports can be safely allowed from that region. For this reason we do not typically include the United States in the lists of regions recognized for any given disease status. In the event that raw material was exported for processing, we could allow it to be reimported under conditions that would be specified on the import permit.

Therefore, in accordance with the regulations in § 92.5, we are announcing our decision to concur with the OIE risk classifications of the following countries:

- Regions of negligible risk for BSE: Austria, Belgium, Brazil, Colombia, Israel, Italy, Japan, the Netherlands, Singapore, Slovenia.
- Regions of controlled risk for BSE: Bulgaria, Costa Rica, Croatia, Nicaragua, Taiwan.

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 26th day of September 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–23407 Filed 9–30–14; 8:45 am]

BILLING CODE 3410–34–P

[2] The report of the OIE scientific commission meeting in February 2013 can be viewed at *http://www.oie.int/fileadmin/Home/eng/Internationa_Standard_Setting/docs/pdf/SCAD/A_SCAD_Feb2013.pdf.* The discussion of the BSE case in Brazil appears on pages 13–14.

[3] The report of the OIE scientific commission meeting in September 2013 can be viewed at *http://www.oie.int/fileadmin/Home/eng/Internationa_Standard_Setting/docs/pdf/SCAD/A_SCAD_Sept2013.pdf.* The discussion of the BSE case in Brazil appears on page 7.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2014–0004]

Availability of an Environmental Assessment and Finding of No Significant Impact for a Biological Control Agent for Soybean Aphid in the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment and finding of no significant impact relative to the release of *Aphelinus rhamni* for the biological control of the soybean aphid, *Aphis glycines,* in the continental United States. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

FOR FURTHER INFORMATION CONTACT: Dr. Shirley A Wager-Pagé, Chief, Pest

Permitting Branch, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2323.

SUPPLEMENTARY INFORMATION: The soybean aphid, *Aphis glycines,* which is native to Asia, was found in North America in 2000 and has since become a major pest. It infested 42 million acres in North America in 2003, resulting in decreased soybean yields and greatly increased control costs. The soybean aphid has invaded most soybean production regions in North America. By 2009, soybean aphid was present in 30 States and 3 Canadian Provinces.

The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the field release of a parasitic wasp, *Aphelinus rhamni,* to reduce the severity of soybean damage from infestations of soybean aphid in the United States.

On May 2, 2014, we published in the **Federal Register** (79 FR 25094–25095, Docket No. APHIS–2014–0004) a notice [1] in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental impacts associated with the proposed release of this biological control agent into the continental United States.

We solicited comments on the EA for 30 days ending June 2, 2014. We received one comment by that date. The commenter stated her opposition to the proposed release of *A. rhamni,* but did not provide any substantive information or specific concerns.

In this document, we are advising the public of our finding of no significant impact (FONSI) regarding the release of *A. rhamni* into the continental United States for use as a biological control agent to reduce the severity of soybean aphid infestations. The finding, which is based on the EA, reflects our determination that release of this biological control agent will not have a significant impact on the quality of the human environment.

The EA and FONSI may be viewed on the Regulations.gov Web site (see footnote 1). Copies of the EA and FONSI are also available for public inspection at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 26th day of September 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–23415 Filed 9–30–14; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, the comment we received, the EA, and the FONSI go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0004.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2014–0014]

Notice of Decision To Allow Interstate Movement of Allium spp. Leaves From Hawaii Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to allow the interstate movement of *Allium* spp. leaves from Hawaii into the continental United States. Based on the findings of a pest risk analysis, which we made available to the public to review and comment through a previous notice, we believe that the application of one or more phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the interstate movement of *Allium* spp. leaves from Hawaii to the continental United States.

DATES: *Effective Date:* October 1, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. David Lamb, Senior Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2103.

SUPPLEMENTARY INFORMATION: Under the regulations in ''Subpart—Regulated Articles From Hawaii and the Territories'' (7 CFR 318.13–1 through 318.13–26, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the interstate movement of fruits and vegetables from Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands to the continental United States to prevent the spread of plant pests and noxious weeds that occur in Hawaii and the territories.

Section 318.13–4 contains a performance-based process for approving the interstate movement of commodities that, based on the findings of a pest risk analysis, can be safely moved subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the pest risk analysis that evaluates the risks associated with the interstate movement of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may begin allowing the interstate movement of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the pest risk analysis; (2) the comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or (3) changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on May 2, 2014 (79 FR 25095–25096, Docket No. APHIS–2014–0014), in which we announced the availability, for review and comment, of a pest risk analysis (PRA) that evaluates the risks associated with the interstate movement of *Allium* spp. from Hawaii into the continental United States. Based on the PRA, we prepared a risk management document (RMD) to identify phytosanitary measures that could be applied to the commodity to mitigate the pest risk.

We solicited comments on the notice, PRA and RMD for 60 days ending on July 1, 2014. We received three comments by that date from a private citizen, a State department of agriculture, and an organization of State plant protection agencies.

Two commenters raised concerns that no production, harvest, or post-harvest procedures were specified in the RMD for the two lepidopteran pests (*Acrolepiopsis sapponensis* and

[1] To view the notice, PRA, RMD, and comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0014.*

Spodoptera litura) and one thrips (*Scirtothrips dorsalis*) identified in the PRA.

We acknowledge that there are no specific harvest or post-harvest mitigation measures detailed in the RMD for those pests; however, evidence of these three insect pests can easily be detected during the required inspection process. In addition, the RMD states that standard commercial practices related to field sanitation must be used to discard infested leaves. If a thrip, identified as *S. dorsalis,* is found by an inspector during the required biometric sampling, then the entire consignment would be prohibited from being moved into the continental United States unless it is treated with an APHIS-approved treatment in Hawaii.

One commenter raised concerns about a nematode, *Ditylenchus dipsaci,* that was not identified as a plant pest in the PRA.

The nematode was analyzed and included within the appendix of the PRA, but no action is required against the nematode because the nematode is associated with the roots of the plant and is not expected to follow the pathway and become established via non-propagative material.

Therefore, in accordance with § 318.13–4, we are announcing our decision to begin allowing the interstate movement of *Allium* spp. leaves from Hawaii into the continental United States subject to the following phytosanitary measures:

- *Allium* spp. leaves are moved as commercial consignments only.
- A biometric sample of leaves of *Allium* spp. must be inspected for quarantine pests following any post-harvest processing. If quarantine pests are found, the entire consignment will be prohibited from movement into the continental United States unless it is treated with an approved quarantine treatment monitored by APHIS.

These conditions will be listed in the Hawaii Fruits and Vegetables Manual (available at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/hawaii.pdf*). In addition to those specific measures, *Allium* spp. from Hawaii will be subject to the general requirements listed in § 318.13–3 that are applicable to the interstate movement of all fruits and vegetables from Hawaii.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 26th day of September 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–23418 Filed 9–30–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2014–0029]

Notice of Decision To Allow Interstate Movement of Fresh Achachairú Fruit From Puerto Rico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to begin allowing the interstate movement into the continental United States of fresh achachairú fruit from Puerto Rico. Based on the analysis, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the interstate movement of achachairú from Puerto Rico.

DATES: *Effective Date:* October 1, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. David Lamb, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2103.

SUPPLEMENTARY INFORMATION: Under the regulations in ''Subpart—Regulated Articles From Hawaii and the Territories'' (7 CFR 318.13–1 through 318.13–26, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) prohibits or restricts the interstate movement of fruits and vegetables into the United States from Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands to prevent plant pests and noxious weeds from being introduced into and spread within the continental United States. (The continental United States is defined in § 318.13–2 of the regulations as the 48 contiguous States, Alaska, and the District of Columbia.)

Section 318.13–4 contains a performance-based process for approving the interstate movement of commodities that, based on the findings of a pest risk analysis, can be safely moved subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the pest risk analysis that evaluates the risks associated with the interstate movement of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may begin allowing the interstate movement of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the pest risk analysis; (2) the comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or (3) changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on June 12, 2014 (79 FR 33715–33716, Docket No. APHIS–2014–0029), in which we announced the availability, for review and comment, of a pest risk analysis that evaluates the risks associated with the interstate movement of fresh achachairú fruit from Puerto Rico into the continental United States. We solicited comments on the notice for 60 days ending on August 11, 2014. We received three comments by that date. The comments were from private citizens and an organization of State plant pest regulatory agencies. All the commenters were generally supportive of the proposed action.

One commenter asked that we also list the scientific name for achachairú. The commenter stated that the scientific name is *Garcinia humilis* (Vahl) C.D. Adams, Clusiaceae. Another commenter stated that the original name for the species was *Rheedia laterifolia.* This commenter disagreed with identifying achachairú as *G. humilis.*

APHIS notes that the scientific name *Garcinia gardneriana* is used in the pest risk assessment. We also note that *Rheedia laterifolia* is widely considered to be a synonym for *Garcinia humilis.* The original request for market access came from a grower who presented the fruit as *Garcinia laterifolia.* However, when we began to consider the grower's request, we found that the Germplasm Resources Information Network

[1] To view the notice, PRA, RMD, and comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0029.*

maintained by the USDA's Agricultural Research Service (ARS) did not support *G. laterifolia* as a valid scientific name. The grower did not agree with changes to the scientific name and requested that APHIS seek another taxonomist or other authority who could use the Internet, scientific papers, and other resources, and would present a scientific report justifying a change to the scientific name. APHIS, with the help of ARS, identified a taxonomist with the New York Botanical Garden who was willing to make a determination of the scientific name. Sterile leaf and fruiting specimens were obtained from the grower's farm in Puerto Rico and sent to the taxonomist for identification. The taxonomist was then able to confirm that the specimen was in fact *Garcinia gardneriana.*

Therefore, in accordance with the regulations in § 318.13–4, we are announcing our decision to begin allowing the interstate movement of fresh achachairú fruit from Puerto Rico into the continental United States subject to the following phytosanitary measures:

- Fresh achachairú fruit must be transported interstate as commercial consignments only.
- Each consignment of fresh achachairú fruit must be inspected in pre-departure clearance for pests by APHIS-Plant Protection and Quarantine prior to shipment from Puerto Rico to the continental United States.

These conditions will be listed in the Puerto Rico Manual, found on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/puerto_rico.pdf.* In addition to those specific measures, fresh achachairú fruit from Puerto Rico will be subject to the general requirements listed in § 318.13–3 that are applicable to the interstate movement of all fruits and vegetables from Puerto Rico.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 26th day of September 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–23419 Filed 9–30–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0086]

Implementation of a Program for Federal Recognition of State Managed Phytosanitary Programs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we are implementing the Federally Recognized State Managed Phytosanitary program, which establishes a process for States to petition the Animal and Plant Health Inspection Service (APHIS) for Federal recognition of State-managed phytosanitary programs developed to eradicate, exclude, or contain plant pests of limited distribution within the United States that APHIS is not currently regulating or is considering no longer regulating under a Federal program. APHIS will evaluate and consider recognizing a State phytosanitary program to control certain pests to determine whether we should continue to take a control action or begin to take a control action against such pests at our United States ports of entry to mitigate the risks posed by those pests when found in consignments of imported goods. This program will make our Federal control actions taken at the ports of entry concerning the dissemination and/or further infestation of certain plant pests more consistent with our control actions regarding the interstate movement of these same pests.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Lamb, Regulatory Policy Specialist, RPM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2018; or Ms. Diane L. Schuble, National Coordinator for Official Control, Pest Detection and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1237; (301) 851–2334.

SUPPLEMENTARY INFORMATION: Under the Plant Protection Act, as amended (PPA, 7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or interstate movement of plants, plant products, or other articles if the Secretary determines that the prohibition or restriction is necessary to prevent a plant pest from being introduced into or disseminated within the United States. This authority has been delegated to the Administrator of the Animal and Plant Health Inspection Service (APHIS).

As part of this mission, APHIS' Plant Protection and Quarantine (PPQ) program responds to foreign introductions of plant pests by taking action at the ports of entry to eradicate, suppress, or contain them through various control programs to prevent their introduction or dissemination into the United States. Under Section 436 of the PPA, States are prohibited from regulating in foreign commerce any plant pests, plants, plant products, or other articles in order to control, eradicate, or prevent the introduction or dissemination of a plant pest or a noxious weed into the United States. Thus, States are preempted from taking action against any imported shipment entering and moving within the United States in foreign commerce on the basis that the shipment is infested with or by a plant pest or noxious weed. However, individual States may establish phytosanitary regulations and procedures to address pests of concern to them when those pests are moving in interstate commerce as long as the State's phytosanitary regulations are consistent with and do not exceed any PPA regulations issued by APHIS.

We recently advised the public that we have been and are continuing to assess certain plant pests that are present in the United States to determine whether we should continue to take action to mitigate the risk posed by those pests when they are found in consignments of imported goods at ports of entry into the United States. We discussed this action in a notice published in the **Federal Register** on November 13, 2013 (78 FR 68020–68021, Docket No. APHIS–2013–0048).

To ensure that we are taking pest control action at the ports of entry only when such action is warranted, we are implementing a program, known as the Federally Recognized State Managed Phytosanitary (FRSMP) program, that establishes a process by which States may petition APHIS to recognize State managed phytosanitary programs developed to eradicate, exclude, or contain a plant pest that is of specific concern to that State and is of limited distribution within the United States. APHIS will consider petitions for State-managed phytosanitary programs that seek to exclude a pest from a State where it is not present, and where economic or environmental harm could result from its introduction. APHIS will also consider petitions for State-managed phytosanitary programs that seek to contain or eradicate plant pests that are of specific concern to that State and are of limited distribution in the

United States and are also not currently regulated by APHIS. After review of the phytosanitary program information provided by the requesting State, APHIS will decide whether to continue taking any control action at ports of entry to mitigate the risk associated with the specific plant pest if found in shipments in foreign commerce. Federal recognition of a State's phytosanitary program is consistent with APHIS' PPA authorities and APHIS' compliance with International Plant Protection Convention guidelines.[1]

APHIS will begin accepting and considering petitions from States interested in obtaining Federal recognition in the FRSMP program. In order to help States decide whether to petition for such recognition in the FRSMP program, a State can request APHIS to provide a report to the State listing pest interceptions in imported cargo for shipments destined to that State and can also request from APHIS port of entry information on specific pest interceptions for the prior 5 years. To be eligible for FRSMP recognition, a State will be required to demonstrate in their petitions that they meet the following criteria[2] established by the FRSMP program:

- A State must provide detailed information about the absence or limited distribution of a pest in the State, pest pathways and likelihood of introduction into the State, potential economic and environmental harm that the pest may cause in the State, and the State's regulatory program for the pest that includes monitoring, surveillance, and control methods.
- A State must provide evidence that it has the authority to control the pest and to restrict activities and articles that facilitate the movement of the pest in the State that is not under Federal quarantine. This can be demonstrated by indicating that the State either has a regulatory quarantine in place to maintain pest freedom or limit pest distribution in the State or has the commitment and capability to enact, implement, and enforce a State regulatory quarantine within a reasonable time.
- A State must also present evidence to APHIS that its control program is technically sound with regard to pest containment and ability to measure results. For instance, a State must show that its mitigation measures are the least restrictive necessary to assure adequate protection and that a quality assurance process exists to measure the effectiveness of such mitigation measures. A State must also provide APHIS with an annual report showing evidence that the phytosanitary management of its program is effective and reliable.
- Finally, a State must be able to define and describe its control program and provide supporting documentation including compliance agreements, auditing reports, and maps defining the regulated areas within the State.

Upon receipt of a petition from a State requesting Federal recognition of its phytosanitary program, that is, requesting to be approved to participate in the FRSMP, APHIS will review the petition, evaluate it using the criteria cited above, and notify the requesting State of our decision. Petitions that fail to fulfill the FRSMP program criteria will be returned to the submitting State and the State will have the option to revise and resubmit its petition.

If we decide to recognize a State program as being part of the FRSMP, APHIS may continue to or begin to take Federal control actions at the United States ports of entry if this pest is intercepted in consignments of imported goods. Presently, when a plant pest of concern is found in a shipment of an imported commodity at a port of entry, APHIS requires mitigation or remedial actions to be taken, such as phytosanitary treatment, re-exportation, or destruction of the infested commodity. Once the FRSMP program begins and if APHIS determines to take Federal action on specific State petitioned FRSMP program plant pests, APHIS will likewise require such remedial measures on a commodity shipment infested with a FRSMP program pest that APHIS has decided to take control action on. Additionally, APHIS may decide to allow an additional remedial option for a shipment involving a FRSMP program plant pest if that shipment can be adequately mitigated or safeguarded to enter into the United States without any phytosanitary mitigation treatment when APHIS determines that the shipment is destined to, or can be re-directed to, a State that does not restrict that pest under the FRSMP program. In such a case, where an infested shipment infested with a FRSMP plant pest is allowed entry without phytosanitary treatment, APHIS may decide to issue an Emergency Action Notification ordering restrictions on the movement and destinations of that infested commodity shipment.

APHIS, in its discretion, may decide to implement provisional FRSMP program status for a phytosanitary pest upon receipt and preliminary review of a State's FRSMP petition. If APHIS decides to implement provisional FRSMP program status for a phytosanitary pest, APHIS may require remedial action on that pest when it is detected arriving in or destined for the petitioning State(s) during the period that APHIS is finalizing review of that State's FRSMP petition. However, Federal collaborator status will not be conferred on a petitioning State agency until the petition is formally approved, which means no Federal authority will be delegated to a State to act upon the FRSMP program pest while that phytosanitary pest is in provisional status.

The provisional FRSMP program status for a phytosanitary pest will not exceed 60 days from the implementation of that provisional status unless APHIS determines it should be extended and the requesting State wants such status extended. Likewise, APHIS may determine at any time that the provisional status be extended or withdrawn as necessary. For example, APHIS may extend a provisional status when a State is requested to submit additional information regarding their specific FRSMP petition. Provisional status may be withdrawn if the petition is denied, when a State notifies APHIS of its intent to withdraw from the petition process, when a State fails to complete the petition within the agreed upon time schedule, or a State no longer wants APHIS to take any control action against a specific phytosanitary pest.

As explained above, the States are preempted under the PPA from taking any phytosanitary plant pest control actions on shipments moving in foreign commerce. Nevertheless, in order to make the FRSMP program operative and workable, APHIS has decided that it will enter into Federal cooperative arrangements with States that have recognized FRSMP program plant pests, in accordance with 7 U.S.C. 450. Under these envisioned cooperative arrangements, the Secretary of the U.S. Department of Agriculture will authorize States that have been accepted into the FRSMP to operate as Federal collaborators to administer and enforce Federal actions on commodity shipments infested with a FRSMP pest that is entering the United States and moving in foreign commerce[3] and as

[1] International Standard for Phytosanitary Measures No. 5, Supplement No.1, ''Guidelines on the interpretation and application of the concepts of ''official control'' and ''not widely distributed.''

[2] The criteria are included in the FRSMP manual available at: *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/frsmp.pdf.*

[3] Articles imported into the United States under the authority of the PPA would remain in foreign commerce until sold to the ultimate consumer. The

the result of such foreign commerce movement is found to be in that FRSMP State. States are obviously prohibited by the PPA from acting in such a Federal regulatory capacity unless such a cooperative arrangement is in place conferring Federal authority upon them to do so by the Secretary of Agriculture. Under these envisioned cooperative arrangements, States may be authorized to administer and enforce control actions to prevent the entry or movement of a specified FRSMP plant pest into or through their State only as Federal collaborators acting under the Federal authority conferred by the cooperative arrangement. APHIS does not confer any authority under the Plant Protection Act not specifically outlined in the cooperative arrangement and is not conferring authority under any other statute administered by APHIS, including the authority to establish and collect fees.

APHIS will monitor those States that have been authorized to act as Federal collaborators to ensure they are complying with the terms of the collaborative arrangement and the FRSMP program criteria. Failure of a State to meet the FRSMP program criteria will result in APHIS reconsidering the FRSMP program eligibility of that State program and the approval of any cooperative arrangement.

In cases where a State is no longer interested in taking action against a FRSMP pest and APHIS can no longer justify continued action against such a FRSMP pest, APHIS will discontinue taking Federal control actions, if APHIS has any such actions in place, when such FRSMP pests are intercepted at the United States ports of entry.

Additional information about the FRSMP program is available on the APHIS Web site at *http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/importexport?1dmy&urile=wcm%3apath%3a%2Faphis_content_library%2Fsa_our_focus%2Fsa_plant_health%2Fsa_domestic_pests_and_diseases%2Fsa_frsmp.*

Done in Washington, DC, this 26th day of September 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–23386 Filed 9–30–14; 8:45 am]

BILLING CODE 3410–34–P

question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis.

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Black Hills National Forest Advisory Board (Board) will meet in Rapid City, South Dakota. The Board is established consistent with the Federal Advisory Committee Act of 1972 (5 U.S.C. App. II), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. sec. 1600 et.seq.), the National Forest Management Act of 1976 (16 U.S.C. sec. 1612), and the Federal Public Lands Recreation Enhancement Act (Pub. L. No. 108–447). Additional information concerning the Board, including the meeting summary/minutes, can be found by visiting the Board's Web site at: *http://www.fs.usda.gov/main/blackhills/workingtogether/advisory committees.*

DATES: The meeting will be held Wednesday, October 15, 2014 at 1:00 p.m.

All meetings are subject to cancellation. For updated status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Mystic Ranger District, 8221 South Highway 16, Rapid City, South Dakota. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Black Hills National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Scott Jacobson, Committee Coordinator, by phone at 605–673–9216, or by email at *sjjacobson@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide:

(1) Rangeland Management presentation; Joint monitoring—Elk management plan;

(2) Forest Health presentation and discussion; Mountain Pine Beetle priority treatment areas for FY15;

(3) Motorized Trail Permits for FY15—Additional purchase opportunities; and

(4) Update from the Recreational Facility working group.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing by October 6, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the Board may file written statements with the Board's staff before or after the meeting. Written comments and time requests for oral comments must be sent to Scott Jacobson, Black Hills National Forest Supervisor's Office, 1019 North Fifth Street, Custer, South Dakota 57730; by email to *sjjacobson@fs.fed.us,* or via facsimile to 605–673–9208.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: September 24, 2014.

Craig Bobzien,

Forest Supervisor.

[FR Doc. 2014–23328 Filed 9–30–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AD20

Extension of Comment Period for the Proposed Directive on Commercial Filming in Wilderness, Special Uses Administration

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed directive; extension of comment period.

SUMMARY: The Forest Service published a notice in the **Federal Register** on September 4, 2014, initiating a 60-day comment period on the Proposed Directive for Commercial Filming in Wilderness; Special Uses, Forest Service Handbook 2709.11, Chapter 40. The closing date of the original notice is scheduled for November 3, 2014. The Agency is extending the comment period for an additional 30 days from the previous closing date.

DATES: Comments must be received by December 3, 2014 .

ADDRESSES: Submit comments electronically by following the instructions at the federal eRulemaking portal at *http://www.regulations.gov* or submit comments via fax to 703–605–5131 or 703–605–5106. Please identify faxed comments by including ''Commercial Filming in Wilderness'' on the cover sheet or first page. Comments may also be submitted via mail to Commercial Filming in Wilderness, USDA, Forest Service, Attn: Wilderness & Wild and Scenic Rivers (WWSR), 201 14th Street SW., Mailstop Code: 1124, Washington, DC 20250–1124.

Email comments may be sent to: *reply_lands@fs.fed.us.* If comments are submitted electronically, duplicate comments should not be sent by mail. Hand-delivered comments will not be accepted and receipt of comments cannot be confirmed. Please restrict comments to issues pertinent to the proposed directive, explain the reasons for any recommended changes, and, where possible, reference the specific section and wording being addressed.

All comments, including names and addresses when provided, will be placed in the record and be made available for public inspection and copying. The public may inspect the comments received at the USDA Forest Service Headquarters, Sidney R. Yates Federal Building, 201 14th Street SW., Washington, DC, in the Office of the Director, WWSR, 5th Floor South, during normal business hours. Visitors are encouraged to call ahead at 202–644–4862 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Elwood York, WWSR, at 202–649–1727.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Forest Service proposed directive on Commercial Filming in Wilderness was drafted in a good faith effort to ensure the fullest protection of America's wild places. To ensure that all members of the public who have an interest in wilderness access have the opportunity to be heard, we are extending the comment period on the proposed directive to December 3, 2014. In the coming weeks the Forest Service will be setting up public meetings to answer questions from the public, including journalists and members of wilderness groups. These meetings are intended to gather further feedback on the proposal and to help us shape the final directive.

Dated: September 25, 2014.

Gregory C. Smith,

Acting Associate Deputy Chief, National Forest Systems.

[FR Doc. 2014–23303 Filed 9–30–14; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meetings of the New York Advisory Committee

Date and Time:

Friday, October 17, 2014, 12:00 p.m. [EST].

Friday, November 14, 2014, 12:00 p.m. [EST].

Friday, December 12, 2014, 12:00 p.m. [EST].

Friday, January 9, 2015, 12:00 p.m. [EST].

Place: Via Teleconference. Public Dial-in 1–877–446–3914; Listen Line Code: 6047238.

TDD: Dial Federal Relay Service 1–800–977–8339 give operator the following number: 202–376–7533—or by email at *ero@usccr.gov.*

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 planning meetings of the New York Advisory Committee to the Commission will convene via conference call on the third Friday in October and the second Friday of every month starting November 2014 through January 2015. The purpose of these planning meetings is for the committee to continue its work on its project on the solitary confinement of juveniles in New York City correctional facilities.

The meetings will be conducted via conference call. Members of the public, including persons with hearing impairments, who wish to listen to the conference calls should contact the Eastern Regional Office (ERO), ten days in advance of the scheduled meeting, so that sufficient number of lines may be reserved. You may contact the Eastern Regional Office by phone at 202–376–7533. Persons with hearing impairments would first call the Eastern Regional Office at the number listed above. Those contacting ERO will be given instructions on how to listen to the conference calls.

Members of the public who call-in can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by 30 days after the meeting date. 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.

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: September 25, 2014.

David Mussatt,

Chief, Regional Programs Coordination Unit.

[FR Doc. 2014–23347 Filed 9–30–14; 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: National Oceanic and Atmospheric Administration (NOAA).

Title: Gulf of Alaska Ecosystem Indicator Selection.

OMB Control Number: 0648–xxxx.

Form Number(s): NA.

Type of Request: Regular (request for a new information collection).

Number of Respondents: 70.

Average Hours per Response: 30 minutes.

Burden Hours: 35.

Needs and Uses: This request is for a new information collection.

The goal of this project is to select a short (8–10) list of ecosystem indicators for the Gulf of Alaska that will form the basis of a Gulf of Alaska (GOA) Report

Card and Ecosystem Assessment to include in the NOAA's Ecosystem Considerations report. This report is produced annually as part of the Stock Assessment and Fishery Evaluation report for the North Pacific Fishery Management Council. The format of the new GOA Report Card and Ecosystem Assessment will be similar to those that have been produced in recent years for the eastern Bering Sea and Aleutian Islands.

The primary recipients, considered to be the stakeholders, of the Report Card and Ecosystem Assessment are those involved with the fishery quota-setting process for the North Pacific Fisheries Management Council. This includes the Science and Statistical Committee and the regional Plan Teams, which of are composed of mainly federal and state scientists, academics, and other individuals. Additional recipients include the Advisory Panel, Council, and stock assessment scientists. The Report Card and Ecosystem Assessment are also made available to the public.

For the purposes of this project, ecosystem indicators are defined as time-series of data that measure some component of the ecosystem. Hundreds of indicators are available for the GOA, which is defined as the Canadian-U.S. boundary at Dixon Entrance to the east and False Pass to the west. The main objective of the survey is to have participants rank the importance of ecosystem indicators among lists of indicators that are presented; the surveys will then be compiled to generate a list of top indicators. We have developed a non-exhaustive list of about 75 ecosystem indicators that are grouped by categories based on ecosystem components, such as forage fish or seabirds. Participants will be asked to select the top three within each category, then the top ten among all categories. Space is provided for suggestions of additional indicators not included. We will use these rankings to form the basis of a new GOA report card and ecosystem assessment.

Affected Public: Individuals; not-for-profit institutions; state, local and tribal government; business or other for-profit organizations.

Frequency: One time.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at 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: September 26, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–23388 Filed 9–30–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for November 2014

The following Sunset Reviews are scheduled for initiation in November 2014 and will appear in that month's Notice of Initiation of Five-Year Sunset Review (''Sunset Review'').

Antidumping duty proceedings	Department contact
Prestressed Concrete Steel Wire Strand from Brazil (A–351–837) (2nd Review)	David Goldberger, (202) 482–4136.
Tetrahydrofurfuryl Alcohol from China (A–570–887) (2nd Review)	David Goldberger, (202) 482–4136.
Commodity Matchbooks from India (A–533–848) (1st Review)	David Goldberger, (202) 482–4136.
Prestressed Concrete Steel Wire Strand from India (A–533–828) (2nd Review)	David Goldberger, (202) 482–4136.
Prestressed Concrete Steel Wire Strand from Japan (A–588–068) (4th Review)	David Goldberger, (202) 482–4136.
Prestressed Concrete Steel Wire Strand from Mexico (A–201–831) (2nd Review)	David Goldberger, (202) 482–4136.
Prestressed Concrete Steel Wire Strand from Republic of Korea (A–580–852) (2nd Review)	David Goldberger, (202) 482–4136.
Prestressed Concrete Steel Wire Strand from Thailand (A–549–820) (2nd Review)	David Goldberger, (202) 482–4136.
Countervailing Duty Proceedings	
Commodity Matchbooks from India (C–533–849) (1st Review)	Jacqueline Arrowsmith, (202) 482–5255.
Prestressed Concrete Steel Wire Strand from India (C–533–829) (2nd Review)	David Goldberger, (202) 482–4136.
Suspended Investigations	
No Sunset Review of suspended investigations is scheduled for initiation in November 2014.	

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 22, 2014.

Christian Marsh,

Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–23408 Filed 9–30–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating the five-year review (''Sunset Review'') of the antidumping and countervailing duty (''AD/CVD'') orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* October 1, 2014.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating Sunset Review(s) of the following antidumping and countervailing duty order(s):

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–570–849	731–TA–753	China	Certain Cut-to-Length Carbon Steel Plate (3rd Review).	Charles Riggle, (202) 482–0650.
A–821–808	731–TA–754	Russian Federation	Certain Cut-to-Length Carbon Steel Plate (3rd Review).	Sally Gannon, (202) 482–0162.
A–823–808	731–TA–756	Ukraine	Certain Cut-to-Length Carbon Steel Plate (3rd Review).	Sally Gannon, (202) 482–0162.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Web site at the following address: ''*http://enforcement.trade.gov/sunset/*.'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''), can be found at 19 CFR 351.303.[1]

Revised Factual Information Requirements

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD/CVD investigations or proceedings initiated on or after August 16, 2013.[3] The formats for the revised certifications are provided at the end of the *Final Rule*. The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: the definition of factual information (19 CFR 351.102(b)(21), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Review the final rule, available at *http://*

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*'') (amending 19 CFR 351.303(g)).

enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt, prior to submitting factual information in this segment. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation at 19 CFR 351.302(c) concerning the extension of time limits for submissions in antidumping and countervailing duty proceedings: *Extension of Time Limits,* 78 FR 57790 (September 20, 2013). The modification clarifies that parties may request an extension of time limits before a time limit established under part 351 of the Department's regulations expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Review the final rule, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm*, prior to submitting factual information in these segments.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (''APO'') to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.[4]

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews. Consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

[4] *See* 19 CFR 351.218(d)(1)(iii).

Dated: September 22, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–23410 Filed 9–30–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–844]

Certain Lined Paper Products From India: Final Results of Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 3, 2014, the Department of Commerce (the Department) published its notice of initiation and preliminary results of a changed circumstances review (CCR) of the countervailing duty order on certain lined paper products from India.[1] The Department preliminarily determined that Navneet Education Limited (Navneet Education) is the successor-in-interest to Navneet Publications (India) Ltd. (Navneet Publications). No parties submitted comments. For these final results we continue to find that Navneet Education is the successor-in-interest to Navneet Publications.

DATES: Effective October 1, 2014.

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202/482–1009.

SUPPLEMENTARY INFORMATION:

Background

On October 17, 2013, Navneet Education submitted a request for a CCR asking the Department to find that Navneet Education is the successor-in-interest to Navneet Publications.[2] On

[1] *See Certain Lined Paper Products from India: Notice of Initiation and Preliminary Results of Changed Circumstances Review,* 79 FR 38011 (July 3, 2014) (*Preliminary Results*); *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006) (*CLPP Order*).

[2] *See* Navneet Education's March 17, 2014, letter to the Department, Request for Changed Circumstances Review Navneet Publications (India) Ltd. (CCR Request) at 2.

May 16, 2014, Navneet Education submitted a revised CCR request updating the period covered by the original CCR request for purposes of determining countervailing duties liability as a result of the *CLPP Order.*[3] On July 3, 2014, the Department published its *Preliminary Results,* in which it preliminarily determined that Navneet Education is the successor-in-interest to Navneet Publications for purposes of the Department's countervailing duty proceeding on certain lined paper products from India.[4] The Department invited interested parties to comment on the *Preliminary Results.*[5] We received no comments or requests for a hearing from interested parties.

Scope of the Order

The merchandise covered by the *CLPP Order* is certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for looseleaf filler paper). The products are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4811.90.9035, 4811.90.9080, 4820.30.0040, 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.[6]

Final Results of Changed Circumstances Review

Because no parties submitted comments opposing the Department's *Preliminary Results,* and because there is no other information or evidence on the record that calls into question the *Preliminary Results,* the Department continues to find that Navneet Education is the successor-in-interest to Navneet Publications for the purpose of determining countervailing duty liability.

Instructions to U.S. Customs and Border Protection

As a result of this determination, we find that Navneet Education should retain the cash deposit rate previously assigned to Navneet Publications (*i.e.,* the 8.76 percent cash deposit rate currently assigned to Navneet Publications) in the most recently completed review of the countervailing duty order on certain lined paper products from India for Navneet Publications.[7] However, because cash deposits are only estimates of the amount of countervailing duties to be assessed, changes in cash deposit rates are not made retroactively.[8] Therefore, as stated in the *Preliminary Results,* no retroactive change will be made to Navneet Education's cash deposit rate, as Navneet Education requested.[9] Consequently, the Department will instruct U.S Customs and Border Protection to collect estimated countervailing duties for all shipments of subject merchandise exported by Navneet Education and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at the current cash deposit rate for Navneet Publications. This cash deposit requirement shall remain in effect until further notice.

Notification

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.216(e).

Dated: September 25, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–23412 Filed 9–30–14; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See CLPP Order;* Navneet Education's May 16, 2014, submission (Second Supplemental Filing).

[4] *See Preliminary Results,* 79 FR at 38011.

[5] *Id.*

[6] For a complete description of the scope of the *CLPP Order, see* the *Preliminary Results.*

[7] *See Certain Lined Paper Products From India: Final Results of Countervailing Duty Administrative Review,* 74 FR 6573, 6574 (February 10, 2009).

[8] *See Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from India,* 77 FR 64953, 64955 (October 24, 2012), unchanged in final, *Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp From India,* 77 FR 73619, December 11, 2012; *see also Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews,* 64 FR 66880, 66881 (November 30, 1999).

[9] Navneet Education argued that the determination as successor-in-interest should be made effective as of the date of the name change, *i.e.,* September 30, 2013. *See* CCR Request at 8 and *see Preliminary Results,* 79 FR at 38012.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (''the Department'') conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the

initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after October 2014, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its ''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

Opportunity to Request a Review: Not later than the last day of October 2014,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

Antidumping duty proceedings	Period of review
Australia: Electrolytic Manganese Dioxide A–602–806	10/1/13–9/30/14
Brazil: Carbon and Certain Alloy Steel Wire Rod A–351–832	10/1/13–9/30/14
Indonesia: Carbon and Certain Alloy Steel Wire Rod A–560–815	10/1/13–9/30/14
Italy: Pressure Sensitive Plastic Tape A–475–059	10/1/13–9/30/14
Mexico: Carbon and Certain Alloy Steel Wire Rod A–201–830	10/1/13–9/30/14
Moldova: Carbon and Certain Alloy Steel Wire Rod A–841–805	10/1/13–9/30/14
Republic of Korea: Polyvinyl Alcohol A–580–850	10/1/13–9/30/14
The People's Republic of China: Barium Carbonate A–570–880	10/1/13–9/30/14
The People's Republic of China: Barium Chloride A–570–007	10/1/13–9/30/14
The People's Republic of China: Electrolytic Manganese Dioxide A–570–919	10/1/13–9/30/14
The People's Republic of China: Helical Spring Lock Washers A–570–822	10/1/13–9/30/14
The People's Republic of China: Polyvinyl Alcohol A–570–879	10/1/13–9/30/14
The People's Republic of China: Steel Wire Garment Hangers A–570–918	10/1/13–9/30/14
Trinidad and Tobago: Carbon and Certain Alloy Steel Wire Rod A–274–804	10/1/13–9/30/14
Countervailing Duty Proceedings	
Brazil: Carbon and Certain Alloy Steel Wire Rod C–351–833	1/1/13–12/31/13
Iran: Roasted In Shell Pistachios C–507–601	1/1/13–12/31/13
Suspension Agreements	
Russian Federation: Uranium A–821–802	10/1/13–9/30/14

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) the Department clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[2]

Further, as explained in *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013), the Department clarified its practice with regard to the conditional review of the non-market economy (NME) entity in administrative reviews of antidumping duty orders. The Department will no longer consider the NME entity as an exporter conditionally subject to administrative reviews. Accordingly, the NME entity will not be under review unless the Department specifically receives a request for, or self-initiates, a review of the NME entity.[3] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity).

Following initiation of an antidumping administrative review when there is no review requested of the NME entity, the Department will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS'') on the IA ACCESS Web site at *http://iaaccess.trade.gov.*[4] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of October 2014. If the Department does not receive, by the last day of October 2014, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 22, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–23409 Filed 9–30–14; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See also* the Enforcement and Compliance Web site at *http://trade.gov/enforcement/.*

[3] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[4] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–978]

High Pressure Steel Cylinders From the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the countervailing duty (CVD) order on high pressure steel cylinders (HPSC) from the People's Republic of China (PRC) for the period January 1, 2013, through December 31, 2013.

DATES: *Effective Date:* October 1, 2014.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin or Joshua Morris, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230;

telephone: (202) 482–6478 or (202) 482–1779, respectively.

Background

On July 31, 2014, the Department initiated an administrative review of the CVD order on HPSC from the PRC with respect to Beijing Tianhai Industry Co., Ltd. (BTIC) covering the period January 1, 2013, through December 31, 2013, based on requests by Norris Cylinder Company (hereinafter, Petitioner) and BTIC.[1] On September 9, 2014, both Petitioner and BTIC timely withdrew their respective requests for an administrative review of BTIC.[2] No other party requested a review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. In this case, both Petitioner and BTIC withdrew their respective requests within the 90-day deadline, and no other party requested an administrative review of the CVD order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding the administrative review of HPSC from the PRC covering the period January 1, 2013, through December 31, 2013, in its entirety.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess CVDs on all entries of HPSC from the PRC made during the period of review at rates equal to the cash deposit of estimated CVDs required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**, if appropriate.

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 79 FR 44390, 44392 (July 31, 2014); *see also* Letter from Petitioner, ''High Pressure Steel Cylinders from the People's Republic of China Revised Request for Administrative Review and Entry of Appearance'' (June 30, 2014); Letter from BTIC, ''Request for the Second Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China, C–570–978 (POR: 01/01/13–12/31/13)'' (June 30, 2014).

[2] *See* Letter from Petitioner, ''Withdrawal of Request for an Administrative Review of the Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China'' (September 9, 2014); Letter from BTIC, ''Withdrawal of Review Request in the Administrative Review of Countervailing Duty Order on High Pressure Steel Cylinders from the People's Republic of China'' (September 9, 2014).

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of CVDs prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of CVDs occurred and the subsequent assessment of doubled CVDs.

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 24, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–23403 Filed 9–30–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–995]

Grain-Oriented Electrical Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of grain-oriented electrical steel (GOES) from the People's Republic of China (the PRC). For information on the estimated subsidy rates, *see* the ''Suspension of Liquidation'' section of this notice.

DATES: *Effective Date:* October 1, 2014.

FOR FURTHER INFORMATION CONTACT: Yasmin Nair, David Cordell or Brian Davis, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202.482.3813, 202.482.0408 or 202.482.7924, respectively.

SUPPLEMENTARY INFORMATION:

Background

Petitioners to this investigation are the AK Steel Corporation, Allegheny Ludlum, LLC, as well as the United Steelworkers, which represents employees of Allegheny Ludlum (collectively, Petitioners). This investigation covers 19 government programs. The mandatory respondent to this investigation is Baoshan Iron & Steel Co., Ltd.

Period of Investigation

The period of investigation for which we are measuring subsidies is January 1, 2012, through December 31, 2012.

Case History

The events that have occurred since the Department published the *Preliminary Determination* on March 11, 2014,[1] are discussed in the Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Issues and Decision Memorandum for the Final Determination of Grain-Oriented Electrical Steel from the People's Republic of China'' (Decision Memorandum), which is hereby adopted by this notice.[2]

Scope of the Investigation

The scope of the investigation covers GOES, which is a flat-rolled alloy steel product containing by weight specific levels of silicon, carbon, and aluminum. For a complete description of the scope of the investigation, *see* Appendix I to this notice.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Decision Memorandum, dated concurrently with

[1] *See Countervailing Duty Investigation of Grain-Oriented Electrical Steel From the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 79 FR 13617 (March 11, 2014).

[2] Public versions of all business proprietary documents and all public documents are on file electronically via the Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, Room 7046 of the main Department of Commerce building.

this notice. A list of the issues that parties raised and to which we responded in the Decision Memorandum is attached to this notice as Appendix II.

The Decision Memorandum is a public document and is on file electronically via IA ACCESS. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html*. The signed and the electronic versions of this memorandum are identical in content.

Use of Facts Otherwise Available, Including Adverse Inferences

For purposes of this final determination, we relied on facts available and applied an adverse inference, in accordance with sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), with regard to (1) the existence of a financial contribution, benefit, and specificity for the alleged subsidy programs and (2) Baoshan Iron & Steel Co., Ltd.'s (Baoshan) net subsidy rate. A full discussion of our decision to rely on adverse facts available is presented in the Decision Memorandum under the section ''Use of Facts Otherwise Available and Adverse Inferences.''

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual rate for Baoshan. Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will determine an ''all-others'' rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable rates, and any rates determined entirely under section 776 of the Act. Section 705(c)(5)(A)(ii) of the Act states that if the countervailable subsidy rates for all exporters and producers individually investigated are zero or *de minimis* rates, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated, including averaging the weighted average countervailable subsidy rates determined for the exporters and producers individually investigated. As described above, Baoshan's subsidy rate was calculated entirely under section 776 of the Act. Therefore, we have resorted to ''any reasonable method'' to derive the ''all-others'' rate, as described under section 705(c)(5)(A)(ii) of the Act. We are basing the ''all-others'' rate on the rate determined for Baoshan, consistent with section 705(c)(5)(A)(ii) of the Act.[3] This issue is discussed in more detail in Comment 1 of the Decision Memorandum.

We determine the total estimated net countervailable subsidy rates to be:

Producer/exporter	Net subsidy *Ad Valorem* rate (percent)
Baoshan Iron & Steel Co., Ltd.	127.69
All-Others	127.69

As a result of our *Preliminary Determination,* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of GOES from the PRC that were entered or withdrawn from warehouse, for consumption on or after March 11, 2014, the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for countervailing duty (CVD) purposes for subject merchandise entered, or withdrawn from warehouse, on or after July 9, 2104, but to continue the suspension of liquidation of all entries from March 11, 2014, through July 8, 2014.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order and reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: September 24, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The scope of this investigation covers grain-oriented silicon electrical steel (GOES). GOES is a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths. The GOES that is subject to this investigation is currently classifiable under subheadings 7225.11.0000, 7226.11.1000, 7226.11.9030, and 7226.11.9060 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs

[3] *See, e.g., Certain Potassium Phosphate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Termination of Critical Circumstances Inquiry,* 75 FR 30375, 30376 (June 1, 2010).

purposes, the written description of the scope of this investigation is dispositive. Excluded are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the HTSUS as a transformer part (*i.e.,* laminations).

Appendix II—Issues and Decision Memorandum

I. Summary
II. Background
A. Case History
B. Period of Investigation
III. Scope Comments
IV. Scope of the Investigation
V. Application of the Countervailing Duty Law to Imports From the PRC
VI. Use of Facts Otherwise Available and Adverse Inferences
A. Selection of the Adverse Facts Available Rate
B. Subsidy Rate Chart
VII. Analysis of Comments
Comment 1: Countervailable Subsidy Rate for Baoshan and All-Others Rate
VIII. Conclusion

[FR Doc. 2014–23390 Filed 9–30–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–821]

Grain-Oriented Electrical Steel From the Russian Federation: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that grain-oriented electrical steel (GOES) from the Russian Federation (Russia) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). In addition, we determine that critical circumstances exist with respect to imports of the subject merchandise from Russia. The period of investigation (POI) is July 1, 2012, through June 30, 2013. The final weighted-average dumping margins of sales at LTFV are listed below in the ''Final Determination'' section of this notice.

DATES: *Effective Date:* October 1, 2014.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood at (202) 482–3874; AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 2014, the Department published the preliminary determination of sales at LTFV of GOES from Russia.[1] [2] We invited interested party comments on the preliminary determination in this investigation. On June 11, 2014, we received case briefs from OJSC Novoliptesk Steel/VIZ-Steel LLC (NLMK) and the Ministry of Economic Development of the Russian Federation. On June 16, 2014, we received a rebuttal brief from the domestic industry.[3] On July 28, 2014, we held a public hearing at the request of NLMK.

Scope of the Investigation

The scope of the investigation covers GOES, which is a flat-rolled alloy steel product containing by weight specific levels of silicon, carbon, and aluminum. For a complete description of the scope of the investigation, see Appendix I to this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and it is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received, we made no changes to our preliminary determination.

Verification

The Department did not verify NLMK in this investigation because we determined that it failed to cooperate to the best of its ability in the preliminary determination.

Final Determination

We continue to determine that the following dumping margins exist for the POI:

Manufacturer/exporter	Dumping margin (percent)
OJSC Novoliptesk Steel/VIZ-Steel LLC	119.88
All Others	68.98

Final Affirmative Determination of Critical Circumstances

We made no changes to our critical circumstances analysis announced in the *Preliminary Determination* and described in ''Decision Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Grain-Oriented Electrical Steel from Russia.''[4] Thus, pursuant to 735(a)(3) of the Act, we continue to find that critical circumstances exist with respect to imports of GOES from Russia from NLMK and the companies covered by the ''all others'' rate. For further discussion, see the Issues and Decision Memorandum at Comment 4.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of GOES from Russia, as described in Appendix I of this notice, for NLMK and the companies covered by the ''all others'' rate which were entered, or withdrawn from warehouse, for consumption on or after February 11, 2014, which is 90 days prior to the publication of the preliminary

[1] *See Grain-Oriented Electrical Steel from Germany, Japan, Poland, and the Russian Federation: Preliminary Determinations of Sales at Less Than Fair Value, Certain Affirmative Preliminary Determinations of Critical Circumstances, and Postponement of Russian Final Determination,* 79 FR 26941 (May 12, 2014) (*Preliminary Determination*).

[2] As part of the preliminary determination, we postponed the deadline for the final determination in this investigation to no later than 135 days after the date of publication of the preliminary determination. *Id.*

[3] The domestic industry includes AK Steel Corporation, Allegheny Ludlum, LLC, and the United Steelworkers (*i.e.,* the parties filing the petition), as well as one additional domestic interested party, the International Union, United Automobile, Aerospace, and Agricultural Implemental Workers of America (UAW).

[4] *See Preliminary Determination,* 79 FR 26941, and accompanying Preliminary Issues and Decision Memorandum.

determination of the investigation in the **Federal Register**.

Further, the Department will instruct CBP to require a cash deposit equal to the amount by which normal value exceeds U.S. price as follows: (1) For NLMK, the cash deposit rate will be equal to the dumping margin which the Department determined in this final determination; (2) if the exporter is not a mandatory respondent identified in this investigation, but the producer is, the cash deposit rate will be the rate established for the producer of the subject merchandise; and (3) the cash deposit rates for all other producers or exporters will be 68.98 percent. The suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we will notify the ITC of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of GOES from Russia no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, this investigation will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order for GOES from Russia directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: September 24, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The scope of this investigation covers grain-oriented silicon electrical steel (GOES). GOES is a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths. The GOES that is subject to this investigation is currently classifiable under subheadings 7225.11.0000, 7226.11.1000, 7226.11.9030, and 7226.11.9060 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive. Excluded are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the HTSUS as a transformer part (*i.e.,* laminations).

Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

1. Application of Adverse Facts Available to NLMK
2. Issues Regarding the Corroboration Analysis
3. Verification of NLMK's Reported Data
4. Critical Circumstances Analysis for NLMK
5. Proposed Suspension Agreement

[FR Doc. 2014–23389 Filed 9–30–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–871]

Grain-Oriented Electrical Steel From the Republic of Korea: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that grain-oriented electrical steel (GOES) from the Republic of Korea (Korea) is being sold in the United States at less than fair value (LTFV) pursuant to section 735 of the Tariff Act of 1930, as amended (the Act). The final weighted-average dumping margins of sales at LTFV are listed below in the ''Final Determination'' section of this notice.

DATES: *Effective Date:* October 1, 2014.

FOR FURTHER INFORMATION CONTACT: Mark Flessner at (202) 482–6312 or Steve Bezirganian at (202) 482–1131; AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 2014, the Department published in the **Federal Register** the preliminary determination of sales at LTFV in the LTFV investigation of GOES from Korea.[1] The following events occurred since the *Preliminary Determination* was issued.

Between May 25, 2014, and June 20, 2014, the Department conducted sales and cost verifications of POSCO in accordance with section 782(i) of the Act.[2]

On August 4, 2014, and August 11, 2014, the petitioners and a domestic interested party,[3] jointly, and POSCO each submitted case and rebuttal briefs, respectively.

Period of Investigation

The period of investigation (POI) is July 1, 2012, through June 30, 2013.

Scope of the Investigation

The scope of the investigation covers GOES, which is a flat-rolled alloy steel product containing by weight specific levels of silicon, carbon, and aluminum. For a complete description of the scope of the investigation, see Appendix I to this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum[4] which is hereby adopted with this notice. A list of the issues raised is attached to this notice as Appendix II. The Issues and

---

[1] *See Grain-Oriented Electrical Steel from the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 79 FR 26939 (May 12, 2014) (*Preliminary Determination*).

[2] *See* ''Verification'' section below.

[3] The petitioners in this investigation are AK Steel Corporation, Allegheny Ludlum, LLC, and the United Steelworkers. In addition, the International Union, United Automobile, Aerospace, and Agricultural Implemental Workers of America (UAW) is a domestic interested party.

[4] *See* the memorandum from Gary Taverman, Associate Deputy Assistant Secretary for AD/CVD Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less than Fair Value Investigation of Grain-Oriented Electrical Steel from the Republic of Korea,'' dated September 24, 2014 (Issues and Decision Memorandum).

Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and it is available to all parties in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Verification

As provided in section 782(i) of the Act, in May and June, 2014, we verified the sales and cost information submitted by POSCO for use in our final determination. We used standard verification procedures including an examination of relevant accounting and production records, and original source documents provided by POSCO.[5]

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the *Preliminary Determination.* For a discussion of these changes, see the ''Margin Calculations'' section of the Issues and Decision Memorandum. Certain other changes were made to the *Preliminary Determination* which are detailed in the COP and CV Calculations Memorandum.[6] The public version of the COP and CV Calculation Memorandum is also available to any party through IA ACCESS or in the Department's Central Record Unit.

Final Determination

The estimated weighted-average dumping margins are as follows:

Producer/exporter	Estimated weighted-average dumping margin (percent)
POSCO	3.68
All Others	3.68

Disclosure

We will disclose the calculations performed for this final determination within five days of its public announcement, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of GOES from Korea as described in the ''Scope of the Investigation'' section of this notice, which were entered, or withdrawn from warehouse, for consumption on or after May 12, 2014, the date of publication of the preliminary determination of this investigation in the **Federal Register**.

Further, the Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price as follows: (1) For the respondent listed in the table above (*i.e.,* POSCO), the cash deposit rate will be equal to the estimated weighted-average dumping margin which the Department determined in this final determination; (2) if the exporter is not a respondent examined in this investigation, but the producer is, the cash deposit rate will be the rate established for the producer of the subject merchandise; and (3) the cash deposit rate for all other producers or exporters will be 3.68 percent, the all others rate listed above. These suspension of liquidation instructions will remain in effect until further notice.

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated ''all others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually examined, excluding all rates that are zero or *de minimis,* and all rates determined entirely under section 776 of the Act. The all others rate is based on the estimated weighted-average dumping margin calculated for POSCO, the only company for which the Department calculated a rate.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of GOES from Korea no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the associated proceeding will be terminated and all securities posted will be refunded. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

[5] *See* the memorandum from Mark Flessner and Tyler R Weinhold to the File entitled, ''Grain-Oriented Electrical Steel from Korea: Verification Report for POSCO,'' dated July 14, 2014; *see also* the memorandum from LaVonne Clark to the File entitled, ''Verification of the Cost Response of POSCO Corporation in the Antidumping Duty Investigation of Grain-Oriented Electrical Steel from the Republic of Korea,'' dated July 28, 2014.

[6] *See* the memorandum from LaVonne Clark to Neal M. Halper, Director, Office of Accounting, entitled, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination—POSCO,'' dated September 24, 2014 (COP and CV Calculations Memorandum).

Dated: September 24, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The scope of this investigation covers grain-oriented silicon electrical steel (GOES). GOES is a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths. The GOES that is subject to these investigations is currently classifiable under subheadings 7225.11.0000, 7226.11.1000, 7226.11.9030, and 7226.11.9060 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive. Excluded are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the HTSUS as a transformer part (*i.e.,* laminations).

Appendix II—List of Issues Raised in Case and Rebuttal Briefs

Summary
Background
Discussion of the Issues
Issue 1: Use of Export Price *versus* Constructed Export Price
Issue 2: CEP Offset
Issue 3: Exporter's Indirect Selling Expenses and Net Reseller Profit Margin
Issue 4: Freight Revenue
Issue 5: Billing Adjustments
Issue 6: Classification of Late Payment Fees as Expenses
Issue 7: Model Match Variables
Issue 8: Differential Pricing Analysis
Issue 9: Floor of Zero for Imputed Credit Expenses
Issue 10: Interest Rate for Imputed Credit for Home Market Sales
Issue 11: General and Administrative and Financial Expense Ratios
Conclusion

[FR Doc. 2014–23393 Filed 9–30–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–994]

Grain-Oriented Electrical Steel From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* October 1, 2014.

SUMMARY: The Department of Commerce (the Department) determines that imports of grain-oriented electrical steel (GOES) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final weighted-average dumping margin for the investigation on GOES from the PRC is listed below in the ''Final Determination Margin'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Edythe Artman or Angelica Mendoza, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3931 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 2014, the Department published the preliminary determination of the less-than-fair-value investigation of GOES from the PRC in the **Federal Register**.[1] The investigation covers sales of GOES from the PRC for the period from January 1, 2013, through June 30, 2013. In the *Preliminary Determination,* we invited interested parties to comment on our findings and to request a hearing to discuss any issues raised in case and rebuttal briefs. On June 3, 2014, Baoshan Iron & Steel Co., Ltd. (Baoshan), the sole respondent in the investigation, filed comments on the preliminary determination and later incorporated these comments in its case brief, filed on July 1, 2014. After obtaining an extension for rebuttal comments, the domestic parties[2] filed a timely rebuttal brief on July 9, 2014. Baoshan requested a hearing to discuss issues in the briefs but later withdrew its request.

Scope of the Investigation

The scope of this investigation covers GOES. GOES is a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths. The GOES that is subject to this investigation is currently classifiable under subheadings 7225.11.0000, 7226.11.1000, 7226.11.9030, and 7226.11.9060 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive. Excluded are flat-rolled products not in coils that, prior to importation into the United States, have been cut to a shape and undergone all punching, coating, or other operations necessary for classification in Chapter 85 of the HTSUS as a transformer part (*i.e.,* laminations).

Verification

The Department did not verify Baoshan because, in the *Preliminary Determination,* we found the company to be uncooperative in its participation in the investigation and thus found its information to be unreliable.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Issues and Decision Memorandum accompanying this notice, and which is hereby adopted by this notice.[3] A list of the issues which the parties raised and to which the Department responded in the memorandum appears in the appendix of this notice. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions

---

[1] *See Grain-Oriented Electrical Steel From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 79 FR 26936 (May 12, 2014) (*Preliminary Determination*).

[2] The petitioners are AK Steel Corporation, Allegheny Ludlum, LLC, and the United Steelworkers. The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America has participated in this investigation as a domestic interested party. These parties (collectively, the ''domestic parties'') made joint submissions in this investigation.

[3] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding ''Decision Memorandum for the Final Determination of the Less-Than-Fair-Value Investigation of Grain-Oriented Electrical Steel from the People's Republic of China'', dated September 24, 2014 (Issues and Decision Memorandum).

of the memorandum are identical in content.

Changes Since the Preliminary Determination

We made no changes to the *Preliminary Determination* based on our review and analysis of the comments received from parties.

Final Determination

The Department determines that the following estimated weighted-average dumping margin exists for the period January 1, 2013, through June 30, 2013:

Producer and exporter	Estimated weighted-average dumping margin (percent)
PRC-wide entity [4]	159.21

Disclosure

Normally, the Department discloses to interested parties the calculations performed in connection with a final determination within five days of the date of publication of the notice of the final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). But because the Department, in accordance with section 776 of the Act, applied adverse facts available to determine the estimated weighted-average dumping margin for the mandatory respondent in this investigation, there are no calculations to disclose to parties.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of GOES from the PRC, as described in the ''Scope of the Investigation'' section of this notice and which were entered, or withdrawn from warehouse, for consumption on or after May 12, 2014, the date of publication of the preliminary determination in the **Federal Register**.

Pursuant to 19 CFR 351.205(d), we will instruct CBP to require a cash deposit for all suspended entries at an *ad valorum* rate equal to the weighted-average amount by which normal value exceeds U.S. price, adjusted where appropriate for export subsidies and estimated domestic subsidy pass-through [5] where, as here, the product under investigation is also subject to a countervailing duty investigation. For all PRC exporters of merchandise under consideration, the cash-deposit rate will be equal to the dumping margin established for the PRC-wide entity. These suspension-of-liquidation and cash-deposit instructions will remain in effect until further notice.

Furthermore, as stated above and consistent with our practice, we will instruct CBP to require a cash deposit equal to the amount by which the normal value exceeds export price or constructed export price, less the amount of countervailing duty determined to constitute an export subsidy. With respect to the PRC-wide entity, we find that an export-subsidy adjustment of 5.31 percent to the cash deposit rate is warranted because this is the export subsidy rate included in the countervailing duty rate to which PRC-wide entries are currently subject.[6]

We are not adjusting the final determination rate for estimated domestic subsidy pass-through because we have no basis upon which to make such an adjustment.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we notified the International Trade Commission (ITC) of the final affirmative determination of sales at less than fair value. Because the final determination in this proceeding is affirmative, the ITC will make its final determination, in accordance with section 735(b)(2) of the Act, as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of GOES from the PRC no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, then the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This determination and notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: September 24, 2014.

Paul Piquado,

Assistant Secretary, for Enforcement and Compliance.

Appendix I—Comments Discussed in the Accompanying Final Issues and Decision Memorandum

Summary
Background
Period of Investigation
Scope of the Investigation
Discussion of Comments
  Comment 1: Application of Adverse Facts Available to Baoshan
  Comment 2: Corroboration of Adverse Facts Available Rate
  Comment 3: Selection of an Adverse Facts Available Rate
Recommendation

[FR Doc. 2014–23391 Filed 9–30–14; 8:45 am]

BILLING CODE 3510–DS–P

[4] The PRC-wide entity includes all producers and exporters of GOES from the PRC, including the companies identified in the petition that did not establish that they are separate from the PRC-wide entity in this investigation: Baoshan, Anshan Iron & Steel Group Corporation, Hebei Shougang Qian'an Iron & Steel Co., Ltd., and Wuhan Iron & Steel Co., Ltd.

[5] *See* sections 772(c)(1)(C) and 777A(f) of the Act, respectively. Unlike in administrative reviews, the Department calculates the adjustment for export subsidies in investigations not in the margin-calculation program, but in the cash-deposit instructions issued to CBP. *See Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India,* 71 FR 45012 (August 8, 2006), and accompanying issues and decision memorandum at comment 1.

[6] *See Grain-Oriented Electrical Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* and accompanying Issues and Decision Memoradum at 8. The final determination in this companion countervailing duty proceeding is being concurrently released on the same day as the final determination in this case.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Membership of the National Oceanic and Atmospheric Administration Performance Review Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of Membership of the NOAA Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), NOAA announces the appointment of members who will serve on the NOAA Performance Review Board (PRB). The NOAA PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service Professional members and making written recommendations to the appointing authority on retention and compensation matters, including performance-based pay adjustments, awarding of bonuses, and reviewing recommendations for potential Presidential Rank Award nominees. The appointment of new members to the NOAA PRB will be for a period of two (2) years.

DATES: *Effective Date:* The effective date of service of the eight new appointees to the NOAA Performance Review Board is September 30, 2014.

FOR FURTHER INFORMATION CONTACT: Christine Nalli, Executive Resources Program Manager, Workforce Management Office, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–6301.

SUPPLEMENTARY INFORMATION: The names and positions of the members for the 2014 NOAA PRB are set forth below:

Mark S. Paese, Chair, Deputy Assistant Administrator, National Environmental Satellite, Data and Information Service.

Jason A. Donaldson, Co-Chair, Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research.

Ciaran M. Clayton, Director of Communications, Office of the Under Secretary.

Michael E. Phelps, Director, Office of Budget, Office of the Secretary, U.S. Department of Commerce.

RDML Anita L. Lopez, Deputy Director, for Operations, OMAO and Deputy Director, NOAA Corps.

Louisa Koch, Director, Office of Education, Office of the Deputy Under Secretary.

Paul N. Doremus, Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

Russell F. Smith, III, Deputy Assistant Secretary for International Fisheries, Office of the Deputy Under Secretary.

Dated: September 22, 2014.

Kathryn D. Sullivan,

Under Secretary of Commerce for Oceans and Atmosphere.

[FR Doc. 2014–23307 Filed 9–30–14; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD523

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a public hearing via webinar for the Red Grouper Framework.

DATES: The webinar will begin at 6 p.m. (E.S.T.) on Thursday, October 16, 2014, and will conclude at the end of public testimony or no later than 9 p.m.

ADDRESSES:

Meeting Address: The meeting will be held via webinar; *https://www4.gotomeeting.com/register/680827519.*

Council Address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Emily Muehlstein, Outreach Specialist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630; fax: (813) 348–1711; email: *emily.muehlstein@gulfcouncil.org.*

SUPPLEMENTARY INFORMATION: The items of discussion in this session are:

Framework Action—Red Grouper Recreational Management Measures, Thursday, October 16, 2014, 6 p.m. Until 9 p.m. (E.S.T.)

Considers changes to recreational red grouper bag limits, bag limit reductions, and closed seasons to improve recreational fishing opportunities by extending the number of days in the fishing season and to achieve optimal yield.

—Adjourn—

This agenda may be modified as necessary to facilitate the discussion of pertinent materials up to and during the scheduled meeting.

Copies of the public hearing document can be obtained by calling (813) 348–1630 or visiting *www.GulfCouncil.org.*

The meeting will be webcast over the internet. A link to the webcast will be available on the Council's Web site, *http://www.gulfcouncil.org.*

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 26, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–23359 Filed 9–30–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD341

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marina Reconstruction Project

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental harassment authorization (IHA) to the Port of Friday Harbor, WA (Port) to incidentally harass, by Level B harassment only, five species of marine mammals during construction activities associated with a marina reconstruction project at Friday Harbor, Washington.

DATES: This authorization is effective from September 3, 2014, through February 15, 2015.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the Port's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 et seq.) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the 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 August 12, 2013, we received a request from the Port for authorization to take marine mammals incidental to pile driving and removal associated with the reconstruction of a marina at Friday Harbor, WA. The Port submitted revised versions of the request on February 28, 2014, June 4, 2014, and June 11, 2014, the last of which we deemed adequate and complete. The Port plans to conduct in-water work that may incidentally harass marine mammals (i.e., pile driving and removal) during a portion of the in-water work window established to protect fish species. This IHA is valid from September 3, 2014, through February 15, 2015. Hereafter, use of the generic term ''pile driving'' may refer to both pile installation and removal unless otherwise noted.

The use of vibratory pile driving is expected to produce underwater sound at levels that have the potential to result in behavioral harassment of marine mammals. Species with the expected potential to be present during all or a portion of the in-water work window include the Steller sea lion (*Eumetopias jubatus monteriensis*), California sea lion (*Zalophus californianus*), harbor seal (*Phoca vitulina richardii*), Dall's porpoise (*Phocoenoides dalli dalli*), and harbor porpoise (*Phocoena phocoena vomerina*). These species may occur year-round in the vicinity of Friday Harbor, with the exception of the Steller and California sea lions, which are generally absent during summer. The Steller sea lion is present from fall to late spring (approximately October to May), while the California sea lion is generally absent only from approximately mid-June to August.

Description of the Specified Activity

Overview

The Port has determined that reconstruction of the marina is necessary due to the increasing age of the existing structures. Repair and replacement work is necessary in order to maintain the existing purpose of the marina, which provides access, permanent and short-term moorage and berthing opportunities, and marina support facilities to commercial and recreational boaters. A vibratory hammer will be used to extract existing timber piles. Broken and damaged pilings unable to be removed with the vibratory hammer may need to be removed with a clamshell bucket. All new piles will be driven with a vibratory hammer, to the extent possible. If vibratory driving is not effective for any given pile (i.e., due to substrate conditions), piles may be installed via confined drilling. No impact pile driving is planned for this project. The Port does not plan to operate multiple pile driving rigs concurrently.

Dates and Duration

The allowable season for in-water work, including pile driving, in the vicinity of Friday Harbor is July 16 through February 15, a window established by the Washington Department of Fish and Wildlife in coordination with NMFS and the U.S. Fish and Wildlife Service to protect salmonid fish. The action will occur only during a portion of that window, from approximately September 1, 2014, through February 15, 2015. The Port expects to require three days for pile removal and a maximum of 26 days for pile installation, for a total of 29 days during this period. Pile driving and removal may occur on any day during the specified period, only during daylight hours.

Specific Geographic Region

The Port of Friday Harbor Marina is located at Friday Harbor, WA, on the eastern shore of San Juan Island (see Figure 1–1 of the Port's application). Friday Harbor is approximately 111 km north of Seattle, WA and 52 km southeast of Victoria, BC. The Town of Friday Harbor is located directly adjacent to the marina. Please refer to the U.S. Navy's Marine Resource Assessment for the Pacific Northwest, which documents and describes the marine resources that occur in Navy operating areas of the Pacific Northwest, including Puget Sound (DoN, 2006), for additional information regarding physical and oceanographic characteristics of the region. The document is publicly available at *www.navfac.navy.mil/products_and_services/ev/products_and_services/marine_resources/marine_resource_assessments.html* (accessed June 16, 2014).

Detailed Description of Activities

We provided a detailed description of the proposed action in our **Federal Register** notice announcing the proposed authorization (79 FR 43402; July 25, 2014). Please refer to that document; we provide only summary information here. The marina

reconstruction project will entail repair and replacement of portions of the existing floats, piles, and walkways. Specifically, the Port plans to replace existing dilapidated finger and main walkway floats, treated timber walers (i.e., structural beams typically mounted to floating docks), and a steel footbridge, and to repair certain existing treated timber piles and bracing and install some new floats. In addition, the Port plans to remove 95 creosoted timber piles (diameters range from 12–20 inches) and replace these with 52 steel pipe piles (twenty at 16-in diameter and 32 at 24-in diameter). Only the removal and installation of piles carries the potential for incidental take of marine mammals, and is considered further in this document. The Port plans to remove existing treated timber piles using vibratory extraction and to install new piles using a vibratory driver as well, to the extent possible.

Comments and Responses

We published a notice of receipt of the Port's application and proposed IHA in the **Federal Register** on July 25, 2014 (79 FR 43402). During the 30-day public comment period, we received a letter from the Marine Mammal Commission, which recommended that we require the Port to re-estimate the number of harbor seal takes using an area-specific haul-out correction factor rather than a pooled regional correction factor (Huber *et al.,* 2001). The Commission also referenced a prior proposal to discuss appropriate use of available information for harbor seals in Washington inland waters (see 79 FR 43432). After having that discussion with the Commission, we determined it was appropriate for this particular activity in this particular location to recalculate harbor seal takes using an area-specific haul-out correction factor. We also agreed that we would consider the most appropriate use of available information for harbor seals (e.g., use of pooled regional haul-out correction factors versus area-specific factors) in Washington inland waters on a case-by-case basis in the future. See the Commission's letter (available on the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm*) for specific detail regarding the recommendation and ''Estimated Take by Incidental Harassment'', later in this document, for specific detail regarding the revised take estimate for harbor seals.

Description of Marine Mammals in the Area of the Specified Activity

There are eleven marine mammal species known to occur in the San Juan Islands region of Washington inland waters, including seven cetaceans and four pinnipeds. The harbor seal is a year-round resident in Washington waters, while the Steller sea lion and California sea lion are seasonally present. Dall's porpoises and harbor porpoises may also occur with year-round regularity in the San Juan Islands. Remaining species that could occur in the project area include the killer whale (*Orcinus orca;* both transient and resident ecotypes), humpback whale (*Megaptera novaeangliae*), gray whale (*Eschrichtius robustus*), minke whale (*Balaenoptera acutorostrata scammoni*), northern elephant seal (*Mirounga angustirostris*), and the Pacific white-sided dolphin (*Lagenorhynchus obliquidens*). While these latter six species could occur in the project area, we do not believe that such occurrence is sufficiently likely to present a reasonable likelihood of take incidental to the specified activity. For more detail, please see the ''Monitoring and Reporting'' and ''Estimated Take by Incidental Harassment'' sections later in this document.

We have reviewed the Port's detailed species descriptions, including life history information, for accuracy and completeness and refer the reader to Section 3 of the Port's application instead of reprinting the information here. Please also refer to NMFS' Web site (*www.nmfs.noaa.gov/pr/species/mammals*) for generalized species accounts and to the Navy's Marine Resource Assessment for the Pacific Northwest, which provides information regarding the biology and behavior of the marine resources that occur in Navy operating areas of the Pacific Northwest, including the San Juan Islands (DoN, 2006). The document is publicly available at *www.navfac.navy.mil/products_and_services/ev/products_and_services/marine_resources/marine_resource_assessments.html* (accessed June 16, 2014). We provided additional information for the potentially affected stocks, including details of stock-wide status, trends, and threats, in our **Federal Register** notice of proposed authorization (79 FR 43402; July 25, 2014).

Table 1 lists the twelve marine mammal stocks that could occur in the vicinity of Friday Harbor during the project timeframe and summarizes key information regarding stock status and abundance. Taxonomically, we follow Committee on Taxonomy (2014). Please see NMFS' Stock Assessment Reports (SAR), available at *www.nmfs.noaa.gov/pr/sars,* for more detailed accounts of these stocks' status and abundance. All stocks are addressed in the Pacific SARs (Carretta *et al.,* 2014), with the exception of the Steller sea lion and transient killer whale, which are treated in the Alaska SARs (Allen and Angliss, 2014).

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF FRIDAY HARBOR

Species	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Annual M/SI [4]	Relative occurrence in San Juan Islands; season of occurrence
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	Eastern North Pacific.	–; N	19,126 (0.071; 18,017; 2007)	558	[12] 127	Seasonal to rare; more likely winter to spring.
Family Balaenopteridae (rorquals):						
Humpback whale.	California/Oregon/Washington (CA/OR/WA).	E/D; Y	1,918 (0.03; 1,855; 2011)	[10] 22	≥5.5	Seasonal to rare with highest likelihood spring to fall.

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF FRIDAY HARBOR—Continued

Species	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Annual M/SI [4]	Relative occurrence in San Juan Islands; season of occurrence
Minke whale	CA/OR/WA	–; N	478 (1.36; 202; 2008)	2	0	Seasonal; more likely spring to fall.
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Pacific white-sided dolphin.	CA/OR/WA	–; N	26,930 (0.28; 21,406; 2008)	171	17.8	Rare but more likely summer and fall.
Killer whale [5] ...	West coast transient [6].	–; N	243 (n/a; 2006)	2.4	0	Likely to rare.
	Eastern North Pacific southern resident.	E/D; Y	85 (n/a; 2012)	0.14	0	Likely to rare.
Family Phocoenidae (porpoises):						
Harbor porpoise.	Washington inland waters [7].	–; N	10,682 (0.38; 7,841; 2003)	63	≥2.2	Likely to rare.
Dall's porpoise	CA/OR/WA	–; N	42,000 (0.33; 32,106; 2008)	257	≥0.4	Likely to rare.
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion.	U.S.	–; N	296,750 (n/a; 153,337; 2008)	9,200	≥431	Seasonal/common; not generally present in Jul.
Steller sea lion	Eastern U.S.	[8] –; N	[9] 63,160–78,198 (n/a; 57,966; 2008–11)	[11] 1,552	65.1	Seasonal; not generally present Jun-Sep.
Family Phocidae (earless seals):						
Harbor seal	Washington inland waters [7].	–; N	14,612 (0.15; 12,844; 1999)	771	13.4	Common; Year-round resident.
Northern elephant seal.	California breeding	–; N	124,000 (n/a; 74,913; 2005)	4,382	≥10.4	Likely to rare.

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (–) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For killer whales, the abundance values represent direct counts of individually identifiable animals; therefore there is only a single abundance estimate with no associated CV. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the specie's (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

[4] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value.

[5] Transient and resident killer whales are considered unnamed subspecies.

[6] The abundance estimate for this stock includes only animals from the ''inner coast'' population occurring in inside waters of southeastern Alaska, British Columbia, and Washington—excluding animals from the ''outer coast'' subpopulation, including animals from California—and therefore should be considered a minimum count. For comparison, the previous abundance estimate for this stock, including counts of animals from California that are now considered outdated, was 354.

[7] Abundance estimates for these stocks are greater than eight years old and are therefore not considered current. PBR is considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates and PBR values, as these represent the best available information for use in this document.

[8] The eastern distinct population segment of the Steller sea lion, previously listed under the ESA as threatened, was delisted on December 4, 2013 (78 FR 66140; November 4, 2013). Because this stock is not below its OSP size and the level of direct human-caused mortality does not exceed PBR, this delisting action implies that the stock is no longer designated as depleted or as a strategic stock under the MMPA.

[9] Best abundance is calculated as the product of pup counts and a factor based on the birth rate, sex and age structure, and growth rate of the population. A range is presented because the extrapolation factor varies depending on the vital rate parameter resulting in the growth rate (i.e., high fecundity or low juvenile mortality).

[10] This stock is known to spend a portion of time outside the U.S. EEZ. Therefore, only a portion of the PBR presented here is allocated for U.S. waters. U.S. PBR allocation is half the total for humpback whales (11).

[11] PBR is calculated for the U.S. portion of the stock only (excluding animals in British Columbia) and assumes that the stock is not within its OSP. If we assume that the stock is within its OSP, PBR for the U.S. portion increases to 2,069.

[12] Includes annual Russian harvest of 123 whales.

Potential Effects of the Specified Activity on Marine Mammals

Our **Federal Register** notice of proposed authorization (79 FR 43402; July 25, 2014), incorporated here by reference, provides a general background on sound relevant to the specified activity as well as a detailed description of marine mammal hearing and of the potential effects of these construction activities on marine mammals.

Anticipated Effects on Habitat

We described potential impacts to marine mammal habitat in detail in our **Federal Register** notice of proposed authorization (79 FR 43402; July 25, 2014). In summary, we have determined that given the short daily duration of sound associated with individual pile driving events, the relatively small areas being affected, and the absence of impact pile driving, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. The area around the Port, including the adjacent ferry terminal and the marina, is subject to significant levels recreational activity and ferry traffic, and is unlikely to harbor significant amounts of forage fish. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Mitigation

In order to issue an IHA 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 on the availability of such species or stock for taking'' for certain subsistence uses.

Measurements from similar pile driving events were coupled with practical spreading loss to estimate zones of influence (ZOI; see ''Estimated Take by Incidental Harassment''). ZOIs are often used to establish a mitigation zone around each pile (when deemed practicable) to prevent Level A harassment to marine mammals, and also provide estimates of the areas within which Level B harassment might occur. ZOIs may vary between different diameter piles and types of installation methods. In addition to the measures described later in this section, the Port will employ the following standard mitigation measures:

(a) Conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Port staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(b) For in-water heavy machinery work other than pile driving (using, e.g., standard barges, tug boats, barge-mounted excavators, or clamshell equipment used to place or remove material), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; (2) positioning of the pile on the substrate via a crane (i.e., stabbing the pile); or (3) removal of the pile from the water column/substrate via a crane (i.e., deadpull). For these activities, monitoring will take place from fifteen minutes prior to initiation until the action is complete.

Monitoring and Shutdown for Pile Driving

The following measures apply to the Port's mitigation through shutdown and disturbance zones:

Shutdown Zone—For all pile driving activities, the Port will establish a shutdown zone. Shutdown zones are often used to bound the area in which SPLs equal or exceed the 180/190 dB root mean square (rms) acoustic injury criteria, with the purpose being to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury of marine mammals. However, the Port's activities are not expected to produce sound at or above the 180 dB rms injury criterion (see ''Estimated Take by Incidental Harassment''). The Port will, however, implement a minimum shutdown zone of 10 m radius for all marine mammals around all pile driving and removal activity. These precautionary measures are intended to further reduce the unlikely possibility of injury from direct physical interaction with construction operations.

Disturbance Zone—Disturbance zones are the areas in which SPLs equal or exceed 120 dB rms for pile driving installation and removal, corresponding to our current criterion for Level B harassment from continuous sound sources. Disturbance zones provide utility for monitoring conducted for mitigation purposes (i.e., shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see ''Monitoring and Reporting''). Nominal radial distances for disturbance zones are shown in Table 2. Given the size of the disturbance zone for vibratory pile driving, it is impossible to guarantee that all animals would be observed or to make comprehensive observations of fine-scale behavioral reactions to sound. We discuss monitoring objectives and protocols in greater depth in ''Monitoring and Reporting.''

In order to document observed incidents of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile and the estimated ZOIs for relevant activities (i.e., pile installation and removal). This information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

Monitoring Protocols—Monitoring will be conducted before, during, and after pile driving and removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted. Monitoring will take place from fifteen minutes prior to initiation through thirty minutes post-completion of pile driving activities. Pile driving activities include the time to remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes. Please see the Marine Mammal Monitoring Plan (available at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm*), developed

by the Port with our approval, for full details of the monitoring protocols.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained biologists, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Advanced education in biological science or related field (undergraduate degree or higher required);
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for fifteen minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (i.e., must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (i.e., when not obscured by dark, rain, fog, etc.). In addition, if such conditions should arise during impact pile driving that is already underway, the activity would be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal. Monitoring will be conducted throughout the time required to drive a pile.

Special Conditions

The Port did not request the authorization of incidental take for any species of whale (as noted previously, gray whales, humpback whales, minke whales, and transient or resident killer whales have the potential to occur in the project vicinity—see discussion below in ''Estimated Take by Incidental Harassment''). Therefore, shutdown will be implemented in the event that any of these species is observed in the vicinity, prior to entering the defined disturbance zone. As described later in this document, we believe that occurrence of these species during the in-water work window would be uncommon and that the occurrence of an individual or group would likely be highly noticeable and would attract significant attention in local media and with local whale watchers and interested citizens.

Prior to the start of pile driving on any day, the Port will contact and/or review the latest sightings data from the Orca Network and/or Center for Whale Research to determine the location of the nearest marine mammal sightings. The Orca Sightings Network consists of a list of over 600 residents, scientists, and government agency personnel in the U.S. and Canada, and includes passive acoustic detections. The presence of whales typically draws public attention and media scrutiny. With this level of coordination in the region of activity, the Port should be able to effectively receive real-time information on the presence or absence of whales, sufficient to inform the day's activities. Pile driving will not occur if there was the risk of incidental harassment of a species for which incidental take was not authorized.

As described in the monitoring plan, a minimum of two shore-based observers and two vessel-based monitoring platforms (each with two observers aboard) will be deployed during pile driving activity. If any species for which take is not authorized is detected, activity will not begin or will shut down.

Timing Restrictions

In the San Juan Islands, designated timing restrictions exist for pile driving activities to avoid in-water work when salmonids are likely to be present. The in-water work window is July 16–February 15, although work will not begin prior to September 1. In-water construction activities will occur during daylight hours (sunrise to sunset).

Soft Start

The use of a soft-start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from vibratory hammers for fifteen seconds at reduced energy followed by a thirty-second waiting period. This procedure is repeated two additional times.

We have carefully evaluated the Port's proposed mitigation measures and considered their effectiveness in past implementation to determine whether they are likely to effect the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (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) we prescribe 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 or 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 number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary 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 our evaluation of the Port's proposed measures, including information from monitoring of implementation of mitigation measures very similar to those described here under previous IHAs for other similar projects in Washington inland waters, including work conducted at Friday Harbor by the Washington State Department of Transportation, we have 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.

Monitoring and Reporting

In order to issue an IHA 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 incidental take authorizations 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.

Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

- Occurrence of marine mammal species in action area (e.g., presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (e.g., source characterization, propagation, ambient noise); (2) Affected species (e.g., life history, dive patterns); (3) Co-occurrence of marine mammal species with the action; or (4) Biological or behavioral context of exposure (e.g., age, calving or feeding areas).
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) Population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.
- Mitigation and monitoring effectiveness.

The Port submitted a marine mammal monitoring plan as part of the IHA application for this project, which can be found on the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* Although this plan was initially developed as part of the ESA consultation process (with NMFS' West Coast Regional Office) to enable the Port to cease activities in the event that ESA-listed species occur in the project vicinity, the plan is applicable to all marine mammals that may occur in the action area.

Visual Marine Mammal Observations

The Port will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Port will monitor the shutdown zone and disturbance zone before, during, and after pile driving and removal, with observers located at the best practicable vantage points. Based on our requirements, the Marine Mammal Monitoring Plan will implement the following procedures for pile driving:

- MMOs will be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible. During vibratory driving, a minimum of six MMOs will be deployed, including two shore-based (with one of these located appropriately to focus on the shutdown zone) and two vessel-based monitoring platforms, each with two observers aboard. Please see Figure 2 of the Port's plan. During vibratory removal, a minimum of three observers shall be deployed at the best vantage points to observe the shutdown and disturbance zones.
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals.
- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible.
- The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. Monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and the Port.

Although we have determined that incidental take of multiple species with recorded occurrence in the action area (e.g., killer whales, humpback whales) is unlikely (see ''Estimated Take by Incidental Harassment''), the Port's monitoring plan will provide additional protections against the unauthorized take of these species. While it is difficult to say with certainty that smaller cetaceans or pinnipeds would always be detected in an area as large as the typical ZOI for vibratory driving (in this case estimated at 6.7 km^2), we do believe that there is a high degree of certainty that large whales would be detected. Therefore, in the event that humpback whales, gray whales, minke whales, or killer whales occurred in the project area, the Port would be able to detect those animals and cease construction activity as necessary to avoid unauthorized take. The Port will also consult available sighting networks (e.g., Orca Network) on a daily basis while pile installation and removal is occurring for situational awareness of large whale occurrence in the general vicinity of Friday Harbor, such that MMOs know when there is the increased possibility for such species to be present.

Data Collection

We require that observers use approved data forms. Among other pieces of information, the Port will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Port will attempt to distinguish between the number of individual animals taken and the number of incidents of take. We require that, at a minimum, the

following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (e.g., percent cover, visibility);
- Water conditions (e.g., sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations; and
- Other human activity in the area.

Reporting

A draft report must be submitted within ninety calendar days of the completion of the in-water work window. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any problems encountered in deploying sound attenuating devices, any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within thirty days following resolution of comments on the draft report.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) of 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].''

All anticipated takes would be by Level B harassment resulting from vibratory pile driving/removal and involving temporary changes in behavior. Injurious or lethal takes are not expected due to the expected source levels and sound source characteristics associated with the activity, and the planned mitigation and monitoring measures are expected to further minimize the possibility of such take.

If a marine mammal responds to a stimulus by changing its behavior (e.g., through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound.

This practice potentially overestimates the numbers of marine mammals taken because it is often difficult to distinguish between the individuals harassed and incidences of harassment. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (e.g., because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

The project area is not believed to be particularly important habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic sound associated with these activities are expected to affect only a relatively small number of individual marine mammals, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity. Specifically, at Friday Harbor marina there is a known individual harbor seal that the Port believes is unlikely to respond to harassing stimuli in aversive manner, meaning the seal is believed likely to simply remain in the immediate vicinity of the marina and be exposed to sound (either airborne or underwater) at or above levels that we consider to incur incidental take. This is accounted for in estimating incidental take for harbor seals below.

The Port has requested authorization for the incidental taking of small numbers of Steller sea lions, California sea lions, harbor seals, Dall's porpoises, and harbor porpoises near Friday Harbor that may result from pile driving during construction activities associated with the marina reconstruction project described previously in this document. In order to estimate the potential incidents of take that may occur incidental to the specified activity, we first estimated the extent of the sound field that may be produced by the activity and then considered that in combination with information about marine mammal density or abundance in the project area. We provided detailed information on applicable sound thresholds for determining effects to marine mammals as well as describing the information used in estimating the sound fields, the available marine mammal density or abundance information, and the method of estimating potential incidences of take, in our **Federal Register** notice of proposed authorization (79 FR 43402; July 25, 2014). With the exception of our revision to the harbor seal take estimate (described below; see also ''Comments and Responses'' above), that information is unchanged, and our take estimates were calculated in the same manner and on the basis of the same information as what was described in the **Federal Register** notice. Modeled distances to relevant thresholds are shown in Table 2 and total estimated incidents of take are shown in Table 3. Please see our **Federal Register** notice of proposed authorization (79 FR 43402; July 25, 2014) for full details of the process and information used in estimating potential incidents of take.

TABLE 2—CALCULATED DISTANCE(S) TO AND AREA ENCOMPASSED BY UNDERWATER MARINE MAMMAL SOUND THRESHOLDS DURING PILE INSTALLATION

Threshold	Distance [1]	Area
Vibratory driving, disturbance (120 dB).	6.3 km	6.7 km^2
Vibratory removal, disturbance (120 dB).	1.6 km	1.8 km^2

[1] Radial distances presented for reference only. Maximum line of sight distance from Friday Harbor before encountering land is approximately 4 km. Please refer to Figure 1–3 in the Port's application.

All calculated distances to and the total area encompassed by the 120-dB marine mammal sound threshold for the two activities are provided in Table 2.

The Port used source values of 177 dB rms for vibratory driving and 168 dB rms for vibratory removal. Because these values are below the 180/190 dB rms injury criteria, there are no zones within which injury would be expected to occur as a result of exposure to underwater sound. Please see also Figure 1–3 of the Port's application for a spatial representation of these zones in relation to local topography, which constrains the actual sound field from reaching the estimated radial distance to threshold for vibratory driving, and in certain directions for vibratory removal. The maximum line of sight distance that may be reached from the Friday Harbor marina before encountering land is approximately 4 km. Distances shown in Table 2 are estimated for free-field conditions, but areas are calculated per the actual conditions of the action area.

Harbor Seal—The Port's methodology for harbor seals—as described in our **Federal Register** notice of proposed authorization (79 FR 43402; July 25, 2014)—follows that described in Jeffries *et al.* (2003). The authors conducted aerial surveys of harbor seals in 1999 for the Washington Department of Fish and Wildlife, dividing the survey areas into seven strata (including five in inland waters and two in coastal waters). To account for animals in the water and not observed during survey counts, a correction factor of 1.53 was applied (Huber *et al.,* 2001) to derive a total population for each stratum (including the San Juan Islands). The correction factor (1.53) was based on the proportion of time seals spend on land versus in the water over the course of a day, and was derived by dividing one by the percentage of time harbor seals spent on land. These data came from tags (VHF transmitters) applied to harbor seals at six areas (Grays Harbor, Tillamook Bay, Umpqua River, Gertrude Island, Protection/Smith Islands, and Boundary Bay, BC) within two different harbor seal stocks (the coastal stock and the Washington inland waters stock) over four survey years. Although the sampling areas included both coastal and inland waters, with pooled correction factors of 1.50 and 1.57, respectively, Huber *et al.* (2001) found no significant difference in the proportion of seals ashore among the six sites and no interannual variation at one site studied across years. In our **Federal Register** notice of proposed authorization (79 FR 43402; July 25, 2014), we retained the total pooled correction factor of 1.53 in determining a non-seasonal density estimate for the San Juan Islands stratum.

However, the Marine Mammal Commission recommended that we require the Port to re-estimate the number of harbor seal takes using an area-specific haul-out correction factor rather than a pooled regional correction factor (Huber *et al.,* 2001). As noted above, Huber *et al.* (2001) provide correction factors from each of six locations, including three each from coastal and inland sites, which the authors combined into a single regional correction factor of 1.53 (1.50 and 1.57 for coastal and inland sites, respectively). However, the correction factor for the Protection/Smith Islands site—located within the San Juan Islands—was 1.85. The Commission holds that, if site- or area-specific correction factors are available, those factors should be used rather than pooled correction factors. Following discussion with the Commission, we determined that in this particular instance it would be appropriate to accept the recommendation and have revised the density estimate used in the take estimation process accordingly. The revised density estimate is shown in Table 3 below.

As described in our **Federal Register** notice of proposed authorization (79 FR 43402; July 25, 2014), we evaluate the potential for incidental take to occur by first multiplying the most appropriate species- and season-specific density estimate by the relevant area of effect (ZOI). Those areas are estimated as 1.8 and 6.7 km^2 for vibratory pile removal and vibratory pile installation, respectively. The product of that calculation is then rounded to the nearest whole number to estimate an instantaneous abundance within the relevant ZOI, which is then multiplied by the number of days of the relevant activity (three and 26 for pile removal and installation, respectively) to arrive at an activity-specific estimate of potential incidents of incidental take. For all species, we have used the highest available density estimate (for either fall or winter when seasonal estimates are available) to evaluate the potential for incidental take. Table 3 summarizes the density estimates described above, the interim products of the calculation, and sums to the total take authorization for each species. We have provided information for all species that may occur in the San Juan Islands, but take authorization is authorized for only a subset of these (i.e., California and Steller sea lions, harbor seal, and harbor and Dall's porpoises). For the remaining species, the take estimation process indicates that incidental take is unlikely. While we recognize that these species may nevertheless occur in the project area, we believe that the Port's monitoring plan further reduces the potential for any of these species (especially the large whales, which are relatively easy to detect and whose occurrence in the region may be noted on a daily basis through consultation with sighting networks such as Orca Network). Finally, we note that there is a single, known individual harbor seal that is not expected to react to stimuli with avoidance behavior. Therefore, we expect that there is the potential for this individual animal to remain present through each day of construction and have added 29 takes (one for each anticipated day of construction) to the total estimate for harbor seals. For reasons described previously in this document, no Level A takes would be expected (nor indicated through the take estimation process) and no takes occurring solely via exposure to airborne sound (with the potential exception of the known individual described here and previously). No take is authorized for those species with a zero value in the right-hand column of Table 3, and no Level A takes or takes solely via airborne sound are authorized.

TABLE 3—CALCULATIONS FOR INCIDENTAL TAKE ESTIMATION

Species	n (animals/km^2)[1]	n * ZOI (vibratory pile removal)	Estimated Level B takes; vibratory removal	n * ZOI (vibratory pile installation)	Estimated Level B takes; vibratory installation	Total proposed authorized takes (% of total stock)
California sea lion	0.676	1.2	3	4.5	130	133 (0.04)
Steller sea lion	0.935	1.7	6	6.2	156	162 (0.3)
Harbor seal	3.8448	6.9	21	25.8	676	[2] 726 (5.0)
Harbor porpoise	2.11226	3.9	12	14.1	364	376 (3.5)
Dall's porpoise	0.39	0.7	3	2.6	78	81 (0.2)

TABLE 3—CALCULATIONS FOR INCIDENTAL TAKE ESTIMATION—Continued

Species	n (animals/km²)[1]	n * ZOI (vibratory pile removal)	Estimated Level B takes; vibratory removal	n * ZOI (vibratory pile installation)	Estimated Level B takes; vibratory installation	Total proposed authorized takes (% of total stock)
Killer whale (transient)	0.00306 (fall)	0.01	0	0.02	0	0
Killer whale (resident)	0.02024 (fall)	0.04	0	0.1	0	0
Minke whale	0.02	0.04	0	0.1	0	0
Humpback whale	0.00014 (fall)	0.0003	0	0.001	0	0
Gray whale	0.0051 (winter)	0.01	0	0.03	0	0
Pacific white-sided dolphin	0.00248 (fall)	0.005	0	0.02	0	0
Northern elephant seal	0.0063	0.01	0	0.04	0	0

[1] Best available species- and season-specific density estimate, with season noted in parentheses where applicable.
[2] This value includes 29 additional incidents of take to account for the known individual seal expected to remain present at Friday Harbor during construction. See explanation above.

Analyses and Determinations

Negligible Impact Analysis

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.'' 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, we consider other factors, such as the likely nature of any responses (e.g., intensity, duration), the context of any responses (e.g., critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

Pile driving activities associated with the marina reconstruction project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving is happening.

No injury, serious injury, or mortality is anticipated given the methods of construction. Measures designed to minimize the possibility of injury to marine mammals (e.g., exclusion zones) further reduce any possibility of injury. Specifically, vibratory hammers are the sole method of installation, and this activity does not have significant potential to cause injury to marine mammals due to the relatively low source levels produced (expected to be less than 180 dB rms) and the lack of potentially injurious source characteristics. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks than does vibratory driving or removal. The likelihood that marine mammal detection ability by trained observers is high under the general environmental conditions expected for Friday Harbor, in concert with the very small shutdown zones—which are defined as a precautionary measure only, as expected source levels are below the relevant injury criteria—further enables the implementation of shutdowns to avoid any potential for injury.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from similar past projects, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. In response to vibratory driving, harbor seals (which may be somewhat habituated to human activity along the Friday Harbor waterfront) have been observed to orient towards and sometimes move towards the sound. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in fitness to those individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the project area while the activity is occurring.

For pinnipeds, no rookeries are present in the project area, and there are few haul-outs other than rocks used by harbor seals at the distant edge of the Level B ZOI for pile installation and opportunistic haul-outs provided by man-made objects. The project area is not known to provide foraging habitat of any special importance. The pile driving activities analyzed here are similar to other nearby construction activities In Washington inland waters, including recent projects conducted by WSDOT at the same location (Friday Harbor and Orcas Island Ferry Terminals), which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of injury, serious injury, or mortality may reasonably be considered discountable; (2) the anticipated incidences of Level B harassment consist of, at worst, temporary modifications in behavior; (3) the absence of any major rookeries and only a few isolated and opportunistic haul-out areas near or adjacent to the project site; (4) the absence of any other known areas or features of special significance for foraging or reproduction within the project area; and (6) the likely efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable impact. In addition, none of

the stocks for which take is authorized are listed under the ESA or designated as depleted under the MMPA. All of the stocks for which take is authorized are thought to be increasing or to be within OSP size. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, including those conducted at the same time of year and in the same location, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. The specified activity is not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts. 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 planned monitoring and mitigation measures, we find that the total marine mammal take from the Port's marina reconstruction activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers Analysis

The numbers of animals authorized to be taken for all species would be considered small relative to the relevant stocks or populations (ranging from less than one percent for sea lions and Dall's porpoise to five percent for harbor seals) even if each estimated taking occurred to a new individual—an extremely unlikely scenario. For pinnipeds occurring in the vicinity of the Friday Harbor waterfront, there will almost certainly be some overlap in individuals present day-to-day, and these takes are likely to occur only within some small portion of the overall regional stock, such as the number of harbor seals that regularly use nearby haul-out rocks. For migratory species, the segment of the overall stock to which take would accrue is likely much smaller. For example, of the estimated 296,500 California sea lions, only certain adult and subadult males—believed to number approximately 3,000–5,000 by Jeffries *et al.* (2000)—travel north during the non-breeding season. That number has almost certainly increased with the population of California sea lions—the 2000 SAR for California sea lions reported an estimated population size of 204,000–214,000 animals—but likely remains a relatively small portion of the overall population.

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, we find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No marine mammal species listed under the ESA are expected to be affected by these activities. Therefore, we have determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, we prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from issuance of an IHA to the Port for the specified activities and found that it would not result in any significant impacts to the human environment. We signed a Finding of No Significant Impact (FONSI) on August 29, 2014.

Authorization

As a result of these determinations, we have issued an IHA to the Port for conducting the described activities at Friday Harbor, Washington, from September 3, 2014 through February 15, 2015, provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 24, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–23338 Filed 9–30–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD393

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Pier Maintenance Project

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental harassment authorization (IHA) to the U.S. Navy (Navy) to incidentally harass, by Level B harassment only, three species of marine mammals during construction activities associated with a pier maintenance project at Naval Base Kitsap Bremerton, Washington.

DATES: This authorization is effective from October 1, 2014, through March 1, 2015.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the Navy's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* A memorandum describing our adoption of the Navy's Environmental Assessment (2013) and our associated Finding of No Significant Impact, prepared pursuant to the National Environmental Policy Act, are also available at the same site. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are

issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the 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 June 16, 2014, we received a request from the Navy for authorization to take marine mammals incidental to pile driving and removal associated with the Pier 6 pile replacement project at Naval Base Kitsap Bremerton, WA (NBKB). The Navy submitted a revised version of the request on July 29, 2014, which we deemed adequate and complete. The Navy plans to continue this multi-year project, involving impact and vibratory pile driving conducted within the approved in-water work window. This IHA covers only the second year (in-water work window) of the project, from October 1, 2014, through March 1, 2015. Hereafter, use of the generic term ''pile driving'' may refer to both pile installation and removal unless otherwise noted.

The use of both vibratory and impact pile driving is expected to produce underwater sound at levels that have the potential to result in behavioral harassment of marine mammals. Species with the expected potential to be present during the in-water work window include the Steller sea lion (*Eumetopias jubatus monteriensis*), California sea lion (*Zalophus californianus*), and harbor seal (*Phoca vitulina richardii*). All of these species may be present throughout the period of validity for this IHA.

This is the second such IHA issued to the Navy for this project, following the IHA issued effective from December 1, 2013, through March 1, 2014 (78 FR 69825). A monitoring report, provided as Appendix D of the Navy's application, is available on the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm* and provides environmental information related to proposed issuance of this IHA for public review and comment.

Description of the Specified Activity

Overview

NBKB serves as the homeport for a nuclear aircraft carrier and other Navy vessels and as a shipyard capable of overhauling and repairing all types and sizes of ships. Other significant capabilities include alteration, construction, deactivation, and dry-docking of naval vessels. Pier 6 was completed in 1926 and requires substantial maintenance to maintain readiness. Over the length of the entire project, the Navy plans to remove up to 400 deteriorating fender piles and to replace them with up to 330 new pre-stressed concrete fender piles.

Dates and Duration

The allowable season for in-water work, including pile driving, at NBKB is June 15 through March 1, a window established by the Washington Department of Fish and Wildlife in coordination with NMFS and the U.S. Fish and Wildlife Service (USFWS) to protect fish. The total three-year project is expected to require 25 days of vibratory pile removal and 77 days of impact pile driving. Under the specified activity—which includes only the portion of the project planned for completion under this IHA—a maximum of sixty pile driving days would occur. The Navy plans to conduct fifteen days of vibratory pile removal and 45 days of pile installation with an impact hammer. Either type of pile driving may occur on any day during the period of validity, including concurrent pile removal and installation. Pile driving may occur only during daylight hours.

Specific Geographic Region

NBKB is located on the north side of Sinclair Inlet in Puget Sound (see Figures 1–1 and 2–1 of the Navy's application). Sinclair Inlet, an estuary of Puget Sound extending 3.5 miles southwesterly from its connection with the Port Washington Narrows, connects to the main basin of Puget Sound through Port Washington Narrows and then Agate Pass to the north or Rich Passage to the east. Sinclair Inlet has been significantly modified by development activities. Fill associated with transportation, commercial, and residential development of NBKB, the City of Bremerton, and the local ports of Bremerton and Port Orchard has resulted in significant changes to the shoreline. The area surrounding Pier 6 is industrialized, armored and adjacent to railroads and highways. Sinclair Inlet is also the receiving body for a wastewater treatment plant located just west of NBKB. Sinclair Inlet is relatively shallow and does not flush fully despite freshwater stream inputs.

Detailed Description of Activities

The Navy plans to remove deteriorated fender piles at Pier 6 and replace them with pre-stressed concrete piles. The entire project calls for the removal of 380 12-in diameter creosoted timber piles and twenty 12-in steel pipe piles. These will be replaced with 240 18-in square concrete piles and ninety 24-in square concrete piles. It is not possible to specify accurately the number of piles that might be installed or removed in any given work window, due to various delays that may be expected during construction work and uncertainty inherent to estimating production rates. The Navy assumes a notional production rate of sixteen piles per day (removal) and four piles per day (installation) in determining the number of days of pile driving expected, and scheduling—as well as exposure analyses—is based on this assumption.

All piles are planned for removal via vibratory driver. The driver is suspended from a barge-mounted crane and positioned on top of a pile. Vibration from the activated driver loosens the pile from the substrate. Once the pile is released, the crane raises the driver and pulls the pile from the sediment. Vibratory extraction is expected to take approximately 5–30 minutes per pile. If piles break during removal, the remaining portion may be

removed via direct pull or with a clamshell bucket. Replacement piles will be installed via impact driver and are expected to require approximately 15–60 minutes of driving time per pile, depending on subsurface conditions. Impact driving and/or vibratory removal could occur on any work day during the period of the IHA. Only one pile driving rig is planned for operation at any given time.

Description of Work Accomplished

During the first in-water work season, the contractor completed installation of two concrete piles, on two separate days. Please see the Navy's report in Appendix D of their application. The Navy initially estimated that 200 work days would be required to complete the project, but has revised that estimate downwards to 102 total days. Therefore, if the Navy completes sixty days of in-water work during year two of the project, we would anticipate that the project would be completed in a third year, with forty additional work days.

Comments and Responses

We published a notice of receipt of the Navy's application and proposed IHA in the **Federal Register** on August 6, 2014 (79 FR 45765). We received a letter from the Marine Mammal Commission, which concurred with our preliminary findings and recommended that we issue the requested IHA, subject to inclusion of the proposed mitigation and monitoring measures. All mitigation and monitoring measures described in our notice of proposed IHA have been included in the IHA as issued.

Description of Marine Mammals in the Area of the Specified Activity

There are five marine mammal species with records of occurrence in waters of Sinclair Inlet in the action area. These are the California sea lion, harbor seal, Steller sea lion, gray whale (*Eschrichtius robustus*), and killer whale (*Orcinus orca*). The harbor seal is a year-round resident of Washington inland waters, including Puget Sound, while the sea lions are absent for portions of the summer. For the killer whale, both transient (west coast stock) and resident (southern stock) animals have occurred in the area. However, southern resident animals are known to have occurred only once, with the last confirmed sighting from 1997 in Dyes Inlet. A group of 19 whales from the L–25 subpod entered and stayed in Dyes Inlet, which connects to Sinclair Inlet northeast of NBKB, for 30 days. Dyes Inlet may be reached only by traversing from Sinclair Inlet through the Port Washington Narrows, a narrow connecting body that is crossed by two bridges, and it was speculated at the time that the whales' long stay was the result of a reluctance to traverse back through the Narrows and under the two bridges. There is one other unconfirmed report of a single southern resident animal occurring in the project area, in January 2009. Of these stocks, the southern resident killer whale is listed (as endangered) under the Endangered Species Act (ESA).

An additional seven species have confirmed occurrence in Puget Sound, but are considered rare to extralimital in Sinclair Inlet and the surrounding waters. These species—the humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata scammoni*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), harbor porpoise (*Phocoena phocoena vomerina*), Dall's porpoise (*Phocoenoides dalli dalli*), and northern elephant seal (*Mirounga angustirostris*)—along with the southern resident killer whale—are considered extremely unlikely to occur in the action area or to be affected by the specified activities, and are not considered further in this document. A review of sightings records available from the Orca Network (*www.orcanetwork.org;* accessed July 14, 2014) confirms that there are no recorded observations of these species in the action area (with the exception of the southern resident sightings described above).

We have reviewed the Navy's detailed species descriptions, including life history information, for accuracy and completeness and refer the reader to Sections 3 and 4 of the Navy's application instead of reprinting the information here. Please also refer to NMFS' Web site (*www.nmfs.noaa.gov/pr/species/mammals*) for generalized species accounts and to the Navy's Marine Resource Assessment for the Pacific Northwest, which documents and describes the marine resources that occur in Navy operating areas of the Pacific Northwest, including Puget Sound (DoN, 2006). The document is publicly available at *www.navfac.navy.mil/products_and_services/ev/products_and_services/marine_resources/marine_resource_assessments.html* (accessed May 2, 2014). We provided additional information for marine mammals with potential for occurrence in the area of the specified activity in our **Federal Register** notice of proposed authorization (79 FR 45765; August 6, 2014).

Table 1 lists the marine mammal species with expected potential for occurrence in the vicinity of NBKB during the project timeframe and summarizes key information regarding stock status and abundance. Taxonomically, we follow Committee on Taxonomy (2014). Please see NMFS' Stock Assessment Reports (SAR), available at *www.nmfs.noaa.gov/pr/sars,* for more detailed accounts of these stocks' status and abundance. The harbor seal, California sea lion, and gray whale are addressed in the Pacific SARs (e.g., Carretta *et al.,* 2014), while the Steller sea lion and transient killer whale are treated in the Alaska SARs (e.g., Allen and Angliss, 2014).

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NBKB

Species	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Annual M/SI [4]	Relative occurrence in Sinclair Inlet; season of occurrence
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae: Gray whale	Eastern North Pacific.	–; N	19,126 (0.071; 18,017; 2007)	558	[11] 127	Rare; year-round.
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NBKB—Continued

Species	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Annual M/ SI [4]	Relative occurrence in Sinclair Inlet; season of occurrence
Killer whale	West coast transient.[5,6]	–; N	243 (n/a; 2006)	2.4	0	Rare; year-round.
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion.	U.S.	–; N	296,750 (n/a; 153,337; 2008)	9,200	≥431	Common; year-round (excluding July).
Steller sea lion	Eastern U.S.[5]	–; N [8]	[9] 63,160–78,198 (n/a; 57,966; 2008–11)	[10] 1,552	65.1	Occasional/seasonal; Oct-May.
Family Phocidae (earless seals):						
Harbor seal	Washington inland waters [7].	–; N	14,612 (0.15; 12,844; 1999)	771	13.4	Common; year-round.

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For killer whales, the abundance values represent direct counts of individually identifiable animals; therefore there is only a single abundance estimate with no associated CV. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the specie's (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

[4] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value. All values presented here are from the draft 2013 SARs (*www.nmfs.noaa.gov/pr/sars/draft.htm*).

[5] Abundance estimates (and resulting PBR values) for these stocks are new values presented in the draft 2013 SARs. This information was made available for public comment and is currently under review and therefore may be revised prior to finalizing the 2013 SARs. However, we consider this information to be the best available for use in this document.

[6] The abundance estimate for this stock includes only animals from the ''inner coast'' population occurring in inside waters of southeastern Alaska, British Columbia, and Washington—excluding animals from the ''outer coast'' subpopulation, including animals from California—and therefore should be considered a minimum count. For comparison, the previous abundance estimate for this stock, including counts of animals from California that are now considered outdated, was 354.

[7] Abundance estimates for these stocks are greater than eight years old and are therefore not considered current. PBR is considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates and PBR values, as these represent the best available information for use in this document.

[8] The eastern distinct population segment of the Steller sea lion, previously listed under the ESA as threatened, was delisted on December 4, 2013 (78 FR 66140; November 4, 2013). Because this stock is not below its OSP size and the level of direct human-caused mortality does not exceed PBR, this delisting action implies that the stock is no longer designated as depleted or as a strategic stock under the MMPA.

[9] Best abundance is calculated as the product of pup counts and a factor based on the birth rate, sex and age structure, and growth rate of the population. A range is presented because the extrapolation factor varies depending on the vital rate parameter resulting in the growth rate (i.e., high fecundity or low juvenile mortality).

[10] PBR is calculated for the U.S. portion of the stock only (excluding animals in British Columbia) and assumes that the stock is not within its OSP. If we assume that the stock is within its OSP, PBR for the U.S. portion increases to 2,069.

[11] Includes annual Russian harvest of 123 whales.

Potential Effects of the Specified Activity on Marine Mammals

Our **Federal Register** notice of proposed authorization (79 FR 45765; August 6, 2014) provides a general background on sound relevant to the specified activity as well as a detailed description of marine mammal hearing and of the potential effects of these construction activities on marine mammals.

Anticipated Effects on Habitat

We described potential impacts to marine mammal habitat in detail in our **Federal Register** notice of proposed authorization (79 FR 45765; August 6, 2014). In summary, we have determined that given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. The area around NBKB, including the adjacent ferry terminal and nearby marinas, is heavily altered with significant levels of industrial and recreational activity, and is unlikely to harbor significant amounts of forage fish. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Mitigation

In order to issue an IHA 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 on the availability of such species or stock for taking for certain subsistence uses.

Measurements from similar pile driving events were coupled with practical spreading loss to estimate zones of influence (ZOI; see ''Estimated Take by Incidental Harassment''); these values were used to develop mitigation measures for pile driving activities at NBKB. The ZOIs effectively represent the mitigation zone that would be established around each pile to prevent Level A harassment to marine mammals, while providing estimates of the areas within which Level B harassment might occur. In addition to the specific measures described later in this section, the Navy will conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Monitoring and Shutdown for Pile Driving

The following measures apply to the Navy's mitigation through shutdown and disturbance zones:

Shutdown Zone—For all pile driving activities, the Navy will establish a shutdown zone intended to contain the area in which SPLs equal or exceed the acoustic injury criteria for pinnipeds (190 dB root mean square [rms]). The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury of marine mammals (as described previously under ''Potential Effects of the Specified Activity on Marine Mammals'' in our notice of proposed authorization [79 FR 45765; August 6, 2014], serious injury or death are unlikely outcomes even in the absence of mitigation measures). Modeled radial distances for shutdown zones are shown in Table 2. However, a minimum shutdown zone of 10 m (which is larger than the maximum predicted injury zone) will be established during all pile driving activities, regardless of the estimated zone. Vibratory pile driving activities are not predicted to produce sound exceeding the 190-dB Level A harassment threshold, but these precautionary measures are intended to prevent the already unlikely possibility of physical interaction with construction equipment and to further reduce any possibility of acoustic injury.

Disturbance Zone—Disturbance zones are the areas in which SPLs equal or exceed 160 and 120 dB rms (for impulse and continuous sound, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (i.e., shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see ''Monitoring and Reporting''). Nominal radial distances for disturbance zones are shown in Table 2.

In order to document observed incidences of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. It may then be estimated whether the animal was exposed to sound levels constituting incidental harassment on the basis of predicted distances to relevant thresholds in post-processing of observational and acoustic data, and a precise accounting of observed incidences of harassment created. This information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

Monitoring Protocols—Monitoring will be conducted before, during, and after pile driving activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities must be halted. Monitoring will take place from fifteen minutes prior to initiation through thirty minutes post-completion of pile driving activities. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes. Please see the Monitoring Plan (Appendix C in the Navy's application), developed by the Navy in consultation with NMFS, for full details of the monitoring protocols.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained biologists, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Advanced education in biological science or related field (undergraduate degree or higher required);
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for fifteen minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (i.e., must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (i.e., when not obscured by dark, rain, fog,

etc.). In addition, if such conditions should arise during impact pile driving that is already underway, the activity must be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal. Monitoring will be conducted throughout the time required to drive a pile.

Special Conditions

The Navy did not request the authorization of incidental take for killer whales or gray whales (see discussion below in ''Estimated Take by Incidental Harassment''). Therefore, shutdown will be implemented in the event that either of these species is observed in the vicinity, prior to entering the defined disturbance zone. As described later in this document, we believe that occurrence of these species during the in-water work window would be uncommon and that the occurrence of an individual or group would likely be highly noticeable and would attract significant attention in local media and with local whale watchers and interested citizens. Prior to the start of pile driving on any day, the Navy will contact and/or review the latest sightings data from the Orca Network and/or Center for Whale Research to determine the location of the nearest marine mammal sightings. The Orca Sightings Network consists of a list of over 600 residents, scientists, and government agency personnel in the U.S. and Canada, and includes passive acoustic detections. The presence of a killer whale or gray whale in the southern reaches of Puget Sound would be a notable event, drawing public attention and media scrutiny. With this level of coordination in the region of activity, the Navy should be able to effectively receive real-time information on the presence or absence of whales, sufficient to inform the day's activities. Pile driving will not occur if there was the risk of incidental harassment of a species for which incidental take was not authorized.

During vibratory pile removal, four land-based observers will monitor the area; these will be positioned with two at the pier work site, one at the eastern extent of the ZOI in the Manette neighborhood of Bremerton, and one at the southern extent of the ZOI near the Annapolis ferry landing in Port Orchard (please see Figure 1 of Appendix C in the Navy's application). Additionally, one vessel-based observer will travel through the monitoring area, completing an entire loop approximately every thirty minutes. If any killer whales or gray whales are detected, activity will not begin or will shut down.

Timing Restrictions

In the project area, designated timing restrictions exist to avoid in-water work when salmonids and other spawning forage fish are likely to be present. The in-water work window is June 15-March 1. All in-water construction activities will occur only during daylight hours (sunrise to sunset).

Soft Start

The use of a soft start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. This procedure is repeated two additional times. It is difficult to specify the reduction in energy for any given hammer because of variation across drivers and, for impact hammers, the actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in ''bouncing'' of the hammer as it strikes the pile, resulting in multiple ''strikes.'' The pier maintenance project will utilize soft start techniques for both impact and vibratory pile driving. We require the Navy to initiate sound from vibratory hammers for fifteen seconds at reduced energy followed by a thirty-second waiting period, with the procedure repeated two additional times. For impact driving, we require an initial set of three strikes from the impact hammer at reduced energy, followed by a thirty-second waiting period, then two subsequent three strike sets. Soft start will be required at the beginning of each day's pile driving work and at any time following a cessation of pile driving of thirty minutes or longer (specific to impact and vibratory driving).

We have carefully evaluated the Navy's proposed mitigation measures and considered their effectiveness in past implementation to determine whether they are likely to effect the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (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) we prescribe 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 or 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 number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary 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 our evaluation of the Navy's proposed measures, as well as any other potential measures that may be relevant to the specified activity, we have 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.

Monitoring and Reporting

In order to issue an IHA 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 incidental take authorizations 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.

Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

- Occurrence of marine mammal species in action area (e.g., presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (e.g., source characterization, propagation, ambient noise); (2) Affected species (e.g., life history, dive patterns); (3) Co-occurrence of marine mammal species with the action; or (4) Biological or behavioral context of exposure (e.g., age, calving or feeding areas).
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) Population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.
- Mitigation and monitoring effectiveness.

The Navy submitted a marine mammal monitoring plan as part of the IHA application for year one of this project. It will be carried forward for year two of this project and can be found as Appendix C of the Navy's application, on the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.*

Acoustic Monitoring

The Navy will implement a sound source level verification study during the specified activities. Data will be collected in order to estimate airborne and underwater source levels for vibratory removal of timber piles and impact driving of concrete piles, with measurements conducted for ten piles of each type. Monitoring will include one underwater and one airborne monitoring position. These exact positions will be determined in the field during consultation with Navy personnel, subject to constraints related to logistics and security requirements. Reporting of measured sound level signals will include the average, minimum, and maximum rms value and frequency spectra for each pile monitored. Please see section 11.4.4 of the Navy's application for details of the Navy's acoustic monitoring plan.

Visual Marine Mammal Observations

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Navy will monitor the shutdown zone and disturbance zone before, during, and after pile driving, with observers located at the best practicable vantage points. Based on our requirements, the Navy would implement the following procedures for pile driving:

- MMOs will be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible.
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals.
- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity must be halted.
- The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. Monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and the Navy.

Data Collection

We require that observers use approved data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Navy will attempt to distinguish between the number of individual animals taken and the number of incidents of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (e.g., percent cover, visibility);
- Water conditions (e.g., sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations; and
- Other human activity in the area.

Reporting

A draft report will be submitted to NMFS within 45 days of the completion of marine mammal monitoring, or sixty days prior to the issuance of any subsequent IHA for this project, whichever comes first. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within thirty days following resolution of comments on the draft report.

Monitoring Results From Previously Authorized Activities

The Navy complied with the mitigation and monitoring required under the previous authorization for this project. Marine mammal monitoring occurred before, during, and after each pile driving event. During the course of these activities, the Navy did not exceed the take levels authorized under the IHA.

In accordance with the 2013 IHA, the Navy submitted a monitoring report (Appendix D of the Navy's application). The Navy's specified activity in relation to the 2013 IHA included a total of 65 pile driving days; however, only a limited program of test pile driving actually took place. Pile driving

occurred on only two days, with a total of only two piles driven (both impact-driven concrete piles). The only species observed was the California sea lion. A total of 24 individuals were observed within the defined Level B harassment zone, but all were hauled-out on port security barrier floats outside of the defined Level B harassment zone for airborne sound. Therefore, no take of marine mammals occurred incidental to project activity under the year one IHA.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) of 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].''

All anticipated takes would be by Level B harassment resulting from vibratory and impact pile driving and involving temporary changes in behavior. The planned mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by Level A harassment, serious injury, or mortality is considered extremely unlikely. However, it is unlikely that injurious or lethal takes would occur even in the absence of the planned mitigation and monitoring measures.

If a marine mammal responds to a stimulus by changing its behavior (e.g., through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound. This practice potentially overestimates the numbers of marine mammals taken. In addition, it is often difficult to distinguish between the individuals harassed and incidences of harassment. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (e.g., because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

This practice potentially overestimates the numbers of marine mammals taken because it is often difficult to distinguish between the individuals harassed and incidences of harassment. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (e.g., because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

The project area is not believed to be particularly important habitat for marine mammals, nor is it considered an area frequented by marine mammals, although harbor seals may be present year-round and sea lions are known to haul-out on man-made objects at the NBKB waterfront. Sightings of other species are rare. Therefore, behavioral disturbances that could result from anthropogenic sound associated with these activities are expected to affect only a relatively small number of individual marine mammals, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity.

The Navy requested authorization for the incidental taking of small numbers of Steller sea lions, California sea lions, and harbor seals in Sinclair Inlet and nearby waters that may result from pile driving during construction activities associated with the pier maintenance project described previously in this document. In order to estimate the potential incidents of take that may occur incidental to the specified activity, we first estimated the extent of the sound field that may be produced by the activity and then considered that in combination with information about marine mammal density or abundance in the project area. We provided detailed information on applicable sound thresholds for determining effects to marine mammals as well as describing the information used in estimating the sound fields, the available marine mammal density or abundance information, and the method of estimating potential incidences of take, in our **Federal Register** notice of proposed authorization (79 FR 45765; August 6, 2014). That information is unchanged, and our take estimates were calculated in the same manner and on the basis of the same information as what was described in the **Federal Register** notice. Modeled distances to relevant thresholds are shown in Table 2 and total estimated incidents of take are shown in Table 3. Please see our **Federal Register** notice of proposed authorization (79 FR 32828; June 6, 2014) for full details of the process and information used in estimating potential incidents of take.

TABLE 2—DISTANCES TO RELEVANT SOUND THRESHOLDS AND AREAS OF ENSONIFICATION, UNDERWATER

Description	Distance to threshold (m) and associated area of ensonification (km^2) [1]			
	190 dB	180 dB	160 dB	120 dB
Concrete piles, impact	1.2, <0.0001	5.4, 0.0001	117, 0.04	n/a
Steel piles, vibratory	0	0	n/a	[2] 2,154, 7.5
Timber piles, vibratory	0	0	n/a	1,585; 5.0

[1] SPLs used for calculations were: 191 dB for impact driving, 170 dB for vibratory removal of steel piles, and 168 dB for vibratory removal of timber piles.

[2] Areas presented take into account attenuation and/or shadowing by land. Please see Figures B–1 and B–2 in the Navy's application.

Sinclair Inlet does not represent open water, or free field, conditions. Therefore, sounds would attenuate according to the shoreline topography. Distances shown in Table 2 are estimated for free-field conditions, but areas are calculated per the actual conditions of the action area. See Figures B–1 and B–2 of the Navy's application for a depiction of areas in which each underwater sound threshold is predicted to occur at the project area due to pile driving.

TABLE 3—CALCULATIONS FOR INCIDENTAL TAKE ESTIMATION

Species	n (animals/km^2) [1]	n * ZOI (vibratory steel pile removal) [2]	Abundance [3]	Total authorized takes (% of total stock)
California sea lion	0.1266	1	45	2,700 (0.9)
Steller sea lion	0.0368	0	1	60 (0.09)
Harbor seal	1.219 [4]	9	11	660 (4.5)
Killer whale (transient)	0.0024 (fall)	0	n/a	0
Gray whale	0.0005 (winter)	0	n/a	0

[1] Best available species- and season-specific density estimate, with season noted in parentheses where applicable (Hanser *et al.,* 2014).
[2] Product of density and largest ZOI (7.5 km^2) rounded to nearest whole number; presented for reference only.
[3] Best abundance numbers multiplied by expected days of activity (60) to produce take estimate.
[4] Uncorrected density; presented for reference only.

Analyses and Determinations

Negligible Impact Analysis

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.'' 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, we consider other factors, such as the likely nature of any responses (e.g., intensity, duration), the context of any responses (e.g., critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

Pile driving activities associated with the pier maintenance project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving is happening.

No injury, serious injury, or mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. Specifically, piles will be removed via vibratory means—an activity that does not have the potential to cause injury to marine mammals due to the relatively low source levels produced (less than 180 dB) and the lack of potentially injurious source characteristics—and, while impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks, only small diameter concrete piles are planned for impact driving. Predicted source levels for such impact driving events are significantly lower than those typical of impact driving of steel piles and/or larger diameter piles. In addition, implementation of soft start and shutdown zones significantly reduces any possibility of injury. Given sufficient ''notice'' through use of soft start (for impact driving), marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious. Environmental conditions in Sinclair Inlet are expected to generally be good, with calm sea states, although Sinclair Inlet waters may be more turbid than those further north in Puget Sound or in Hood Canal. Nevertheless, we expect conditions in Sinclair Inlet will allow a high marine mammal detection capability for the trained observers required, enabling a high rate of success in implementation of shutdowns to avoid injury, serious injury, or mortality. In addition, the topography of Sinclair Inlet should allow for placement of observers sufficient to detect cetaceans, should any occur (see Figure 1 of Appendix C in the Navy's application).

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (e.g., Thorson and Reyff, 2006; HDR, 2012). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in San Francisco Bay and in the Puget Sound region, which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of injury, serious injury, or mortality may reasonably be considered discountable; (2) the anticipated incidences of Level B harassment consist of, at worst,

temporary modifications in behavior; (3) the absence of any significant habitat within the project area, including rookeries, significant haul-outs, or known areas or features of special significance for foraging or reproduction; (4) the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable impact. In addition, these stocks are not listed under the ESA or considered depleted under the MMPA. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. The specified activity is not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts. 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 planned monitoring and mitigation measures, we find that the total marine mammal take from Navy's pier maintenance activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers Analysis

The number of incidences of take authorized for these stocks would be considered small relative to the relevant stocks or populations (less than one percent for both sea lion stocks and less than five percent for harbor seals; Table 3) even if each estimated taking occurred to a new individual. This is an extremely unlikely scenario as, for pinnipeds in estuarine/inland waters, there is likely to be some overlap in individuals present day-to-day.

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, we find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No marine mammal species listed under the ESA are expected to be affected by these activities. Therefore, we have determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In compliance with the NEPA of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (CEQ; 40 CFR parts 1500–1508), the Navy prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the pier maintenance project. We made the Navy's EA available to the public for review and comment, in relation to its suitability for adoption in order to assess the impacts to the human environment of issuance of an IHA to the Navy. In compliance with NEPA, the CEQ regulations, and NOAA Administrative Order 216–6, we subsequently adopted that EA and signed a Finding of No Significant Impact (FONSI) on November 8, 2013.

We have reviewed the Navy's application for a renewed IHA for ongoing construction activities for 2014–15 and the 2013–14 monitoring report. Based on that review, we have determined that the proposed action is very similar to that considered in the previous IHA. In addition, no significant new circumstances or information relevant to environmental concerns have been identified. Thus, we have determined that the preparation of a new or supplemental NEPA document is not necessary, and, after review of public comments, reaffirm our 2013 FONSI. The 2013 NEPA documents are available for review at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.*

Authorization

As a result of these determinations, we have issued an IHA to the Navy for conducting the described pier maintenance activities in Sinclair Inlet, from October 1, 2014 through March 1, 2015, provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 24, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–23339 Filed 9–30–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD330

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Breakwater Replacement Project in Eastport, Maine

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

ACTION: Notice; issuance of an incidental take authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Maine Department of Transportation (ME DOT) to take, by harassment, small numbers of four species of marine mammals incidental to breakwater replacement project in Eastport, Maine, between October 1, 2014, through September 30, 2015.

DATES: Effective October 1, 2014, through September 30, 2015.

ADDRESSES: A copy of the application containing a list of the references used in this document, NMFS's Environmental Assessment (EA), Finding of No Significant Impact (FONSI), and the IHA may be obtained by telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**) or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Documents cited in this notice may be viewed, by appointment, during regular business hours, at 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

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.''

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 February 21, 2014, NMFS received an application from ME DOT requesting an IHA for the take, by Level B harassment, of small numbers of harbor seals (*Phoca vitulina*), gray seals (*Halichoerus grypus*), harbor porpoises (*Phocoena phocoena*), and Atlantic white-sided dolphins (*Lagenorhynchus acutus*) incidental to in-water construction activities in Eastport, Maine. Upon receipt of additional information and a revised application, NMFS determined the application complete and adequate on May 6, 2014. On July 31, 2014, NMFS published a **Federal Register** notice (FR 79 44407) for the proposed IHA. No changes were made to the breakwater replacement work as described in the proposed IHA. Please refer to **Federal Register** notice for the proposed IHA for a detailed description of the project activities.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to ME DOT was published in the **Federal Register** on July 31, 2014 (79 FR 44407). That notice described, in detail, ME DOT's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission). All comments specific to ME DOT's application that address the statutory and regulatory requirements or findings NMFS must make to issue an IHA are addressed in this section of the **Federal Register** notice.

Comment 1: The Commission questions the Level A and B harassment zones presented in the **Federal Register** notice (79 FR 44407; July 31, 2014) for the proposed IHA. The zones presented by ME DOT, and subsequently adopted in the proposed IHA, were based on measurements for the Ocean Renewable Power Company, LLC, (ORPC) pile driving of 30-in piles in much deeper water (26–32 m). However, the proposed ME DOT's breakwater replacement will have piles as large as 36-inch and in water depth much shallower (2.4–17 m). The Commission recommends NMFS refer to the California Department of Transportation pile driving measurement report (CALTRANS, 2009) for information regarding source levels of larger piles as well as modeled take zone sizes.

The Commission recommended that NMFS (1) require ME DOT to use exclusion zones greater than 10 m that are precautionary for pile driving using both the impact and downhole hammer and (2) consult with its analysts who have expertise in pile-driving activities and associated in-situ monitoring to determine the appropriate exclusion zones based on Level A harassment threshold of 180 dB re 1 μPa for 36-in piles installed using both an impact and down-hole hammer.

Response: After review of ME DOT's take zone calculation and comparing those with empirical measurements for equivalent piles, NMFS worked with ME DOT and recalculated the Level A and B harassment zones. Subsequently, ME DOT adopted CALTRANS pile driving measurement data of equivalent pile size (36-in diameter) in comparable environment to establish Level B harassment zones for impact and vibratory pile driving and Level A harassment zone for impact pile driving as recommended by NMFS. Although there is no Level A harassment zone for vibratory pile driving, ME DOT will voluntarily establish an exclusion zone for vibratory pile driving at 30 meters from the source. There are no empirical measures for pile driving using a downhole hammer, nevertheless, ME DOT proposes to establish a 333-meter exclusion zone and 1,000-meter zone of influence (ZOI) for downhole pile driving. This distance is based on the observation by Nedwell and Edwards' (2002) measurements of pile driving attenuation in saltwater. These zones will be adjusted based on in-situ hydroacoustic monitoring and sound measurements. The updated initial exclusion zones and zones of influence (ZOIs) are provided in Table 1 below.

TABLE 1—UPDATED INITIAL HARASSMENT ZONES

	Exclusion zone (m)	Zone of influence (m)
Impact Pile Driving	30	1,000
Vibratory Pile Driving	30	1,000
Downhole Pile Driving	333	1,000

Comment 2: The Commission also recommended that NMFS (1) consult with its analysts who have expertise in pile-driving activities and associated in-situ monitoring to estimate appropriate Level B harassment zones for (a) 36-in pipe piles installed using impact and down-hole hammers and vibratory hammers based on 160 and 120 dB re 1 μPa, respectively, (b) sheet piles installed using a vibratory hammer based on 120 dB re 1 μPa, and (c) sheet piles removed using either a vibratory extractor or underwater saw based on 120 dB re 1 μPa and (2) include those zones in the final IHA.

Response: For impact and vibratory pile driving, the initial harassment zones are provided in Table 1 above. For sheet piles removal using either a vibratory extractor or underwater saw based on 120 dB re 1 μPa, the initial zone are set to be 1000 m from the source. This distance will be updated based on hydroacoustic measurements. These zones are included in the final IHA issued to ME DOT.

Comment 3: The Commission recommended that NMFS (1) explicitly require ME DOT to conduct in-situ measurements of all activities (impact, down-hole, and vibratory installation of the 36-in piles and vibratory extraction and sawing of the sheet piles) and, (2)(a) consult with its analysts who have expertise in acoustic monitoring to determine the appropriate methods for collecting the in-situ measurements and establishing the duration of data collection (e.g., 10 piles or sheets using each method) and (b) include those methods in the final IHA.

Response: NMFS agrees with the Commission that ME DOT and will require ME DOT to conduct in-situ measurements of all activities. However, NMFS does not agree with the Commission's recommendation of including specific in-situ measurement methods in the final IHA. Due to the timing of contractor bidding, ME DOT was not able to provide NMFS with detailed hydroacoustic measurement methods prior to NMFS's issuance of an IHA. Nevertheless, NMFS will review and approve the contractor acoustic data collection method before ME DOT begins in-water pile driving and removal activities.

Comment 4: The Commission recommends that NMFS explicitly require in the final IHA ME DOT to conduct in-situ measurements of any concurrent activities (impact, down-hole, and vibratory installation and vibratory extraction and sawing of the sheet piles) and adjust the individual Level A and B harassment zones accordingly.

Response: ME DOT will be required to conduct in-situ measurements of any concurrent activities (impact, down-hole, and vibratory installation and vibratory extraction and sawing of the sheet piles) and adjust the individual Level A and B harassment zones accordingly.

Comment 5: The Commission noted that the **Federal Register** notice for the proposed IHA indicated that ME DOT estimated the potential numbers of takes based on the maximum group size of animals observed during Ocean Renewable Power Company's (ORPC's) marine mammal observations multiplied by the maximum expected number of pile-driving and underwater-sawing days. However, the Commission points out that ME DOT's application and apparently the numbers included in Table 8 of the **Federal Register** notice for the proposed IHA were based on numbers of marine mammals observed by ORPC on an hourly basis for each month scaled to ME DOT's assumed activity hours. The Commission recommends that NMFS authorize the estimated numbers of marine mammal takes for ME DOT activities based on the maximum group size of animals observed during ORPC's marine mammal observation effort multiplied by the maximum expected number of pile/sheet installation and sheet removal days, consistent with the ORPC incidental harassment authorization.

Response: NMFS worked with ME DOT and revised take estimates based on maximum group size as recommended by the Commission. The updated take numbers are provided in Table 2 below.

TABLE 2—ESTIMATED MARINE MAMMAL TAKES BY LEVEL B HARASSMENT

Common species name	Estimated take by Level B harassment	Abundance of stock	Percentage of stock potentially affected	Population trend
Gray seal	456	Over 250,000 in western North Atlantic	0.18	increasing
Harbor seal		70,142 in western North Atlantic	0.65	N/A
Harbor porpoise	456	79,883 in Gulf of Maine/Bay of Fundy	0.57	N/A
Atlantic white-sided dolphin	76	48,819 in the western North Atlantic	0.16	N/A

Comment 6: The Commission noted that a minke whale was observed during ORPC marine mammal monitoring, but incidental taking of that species was not proposed. Accordingly, the Commission recommended that NMFS specify in its final IHA that ME DOT delay or cease pile installation or sheet removal/sawing if an animal(s) from any species or stock for which authorization has not been granted approaches or is observed within any of the Level B harassment zones and would not resume those activities until the animal(s) has been observed to leave the Level B harassment zone.

Response: NMFS agrees with the Commission's recommendation and included a condition in requiring ME DOT to delay or cease pile installation or sheet removal/sawing if an animal(s) from any species or stock for which authorization has not been granted approaches or is observed within any of the Level B harassment zones and would not resume those activities until the animal(s) has been observed to leave the Level B harassment zone.

Comment 7: The Commission recommended that NMFS require ME DOT to conduct monitoring out to the extent of the relevant Level B harassment zones for vibratory pipe pile installation, vibratory sheet pile installation, vibratory sheet extraction, and sheet sawing for at least the majority of time spent conducting each of the four activities.

Response: NMFS agrees with the Commission's recommendation and has included this condition in the final IHA.

Description of Marine Mammals in the Area of the Specified Activity

In the **Federal Register** notice (79 FR 44407; July 31, 2014) for the proposed IHA and in ME DOT's IHA application, it was identified that four marine mammal species under NMFS jurisdiction are likely to occur in the construction area: Parbor seal (*Phoca vitulina*), gray seal (*Halichoerus grypus*), harbor porpoise (*Phocoena phocoena*), and Atlantic white-sided dolphin (*Lagenorhynchus acutus*). There is no change on the information regarding the species in the vicinity of the construction area.

Potential Effects of the Specified Activity on Marine Mammals

The effects of underwater noise from in-water pile driving and pile removal associated with the Eastport breakwater construction activities in Eastport, Maine, has the potential to result in Level B (behavioral) harassment of marine mammal species and stocks in the vicinity of the action area. The Notice of Proposed IHA included a discussion of the effects of anthropogenic noise on marine mammals, which is not repeated here. No instances of hearing threshold shifts, injury, serious injury, or mortality are expected as a result of the breakwater construction activities given the strong likelihood that marine mammals would avoid the immediate vicinity of the pile driving area.

Potential Effects on Marine Mammal Habitat

The primary potential impacts to marine mammals and other marine species are associated with elevated sound levels, but the project may also result in additional effects to marine mammal prey species and short-term local water turbidity caused by in-water construction due to pile removal and pile driving. These potential effects are discussed in detail in the **Federal Register** notice for the proposed IHA and are not repeated here.

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 on the availability of such species or stock for taking for certain subsistence uses (where relevant).

For the proposed ME DOT Eastport breakwater construction activities, NMFS has required that ME DOT implement the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity.

Use of Noise Attenuation Devices

When using a diesel impact hammer to ''proof'' piles, ME DOT shall use sound absorption cushions and/or a bubble curtain to reduce hydroacoustic sound levels and avoid the potential for marine mammal injury. Based on previous studies, sound attenuation devices are expected to reduce sound levels by at least 5 dB.

Exclusion Zones and Zones of Influence (ZOIs)

The purpose of the proposed exclusion zone is to prevent Level A harassment (injury) of any marine mammal species. During all in-water impact pile driving, ME DOT shall establish a preliminary marine mammal exclusion zone around each pile to avoid exposure to sounds at or above 180 dB. In addition, ME DOT shall establish ZOIs within which marine mammals will be exposed to noise levels that could cause Level B behavioral harassment. The received levels for Level B harassment from impact and downhole hammers is 160 dB re 1 μPa, and from vibratory hammer is 120 dB re 1 μPa. The preliminary distances of each zone based on the results of CALTRANS' hydroacoustic monitoring and NMFS recommendation are provided in Table 1 above.

Prior to commencing pile driving, ME DOT shall establish initial harassment zones based on Table 1. These zones shall later be verified by conducting hydroacoustic measurements of sound from in-water construction activities. The hydroacousitc monitoring plan would include the following elements: Monitoring for dB (rms) levels at 10 m from the pile; monitoring at 100 m to proof the marine mammal monitoring areas; and real time reporting of noise levels to the construction team. ME DOT would provide NMFS with a report following completion of the hydroacoustic monitoring.

If hydroacoustic monitoring indicates that threshold isopleths are greater than the initial zones in Table 1, ME DOT would contact NMFS within 48 hours and make the necessary adjustments. Likewise, if threshold isopleths are actually less than originally calculated, downward adjustments may be made to the exclusion zones and/or ZOIs.

The exclusion zone would be monitored continuously to ensure that no marine mammals enter the area. An exclusion zone for vibratory pile driving and underwater sawing is unnecessary as source levels would not exceed the Level A harassment threshold.

Shutdown and Delay Procedures

If a PSO sees a marine mammal within or approaching the exclusion zone prior to start of impact pile driving, the observer would notify the on-site project lead (or other authorized individual) who would then be required to delay pile driving until the marine mammal has has moved out of the exclusion zone or if the animal has not been resighted within 30 minutes. If a marine mammal is sighted within or on a path toward the exclusion zone during pile driving, pile driving would cease until that animal has moved out of the exclusion zone or 30 minutes has lapsed since the last sighting.

In addition, although it is unlikely, if a marine mammal that is not covered under the IHA is sighted in the vicinity of the project area and is about to enter the ZOI, ME DOT shall implement shutdown measures to ensure that the animal is not exposed to noise levels that could result a take.

Soft-Start Procedures

A ''soft-start'' technique shall be used at the beginning of each pile installation and each use of the underwater saw to allow any marine mammal that may be in the immediate area to leave before the pile hammer reaches full energy or saw begins sawing. For vibratory pile driving, the soft-start procedure requires contractors to initiate noise from the vibratory hammer for 15 seconds at 40–60 percent reduced energy followed by a 1-minute waiting period. The procedure would be repeated two additional times before full energy may be achieved. For impact hammering, contractors would be required to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets. For operating the underwater saw, contractors would be required to turn on the saw 3 or 4 times for 2 to 3 seconds each time over the course of 30 seconds. Soft-start procedures would be conducted any time hammering ceases for more than 30 minutes.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and 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. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals.
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned.
- 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 or 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 pile driving and pile removal 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 times (total number or number at biologically important time or location) individuals would be exposed to received levels of pile driving and pile removal, 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 pile driving, 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 our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs 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. USCG submitted a marine mammal monitoring plan as part of the IHA application. It can be found at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* 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 pile driving 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);
- 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.

Monitoring Measures

Hydroacoustic monitoring shall be performed using appropriate method reviewed and approved by NMFS at the initial installation of each pile driving and pile extraction method and underwater sawing to ensure that the harassment isopleths are not extending past the initial distances established and to assess the efficiency of the sound attenuation devices.

In addition, ME DOT shall conduct in-situ hydroacoustic measurements of any concurrent activities (impact, down-hole, and vibratory installation and vibratory extraction and sawing of the sheet piles) and adjust the individual Level A and B harassment zones accordingly.

For visual monitoring of marine mammals, ME DOT shall designate two biologically-trained, on-site protected species observers (PSOs), approved in advance by NMFS, to monitor the exclusion zone (preliminarily set at 30 m) for marine mammals 30 minutes before, during, and 30 minutes after all impact pile driving activities and call for shut down if any marine mammal is observed within or approaching the exclusion zone. These PSOs would be positioned on the pier. One observer would survey inwards toward the pile driving site and the second observer would conduct behavioral monitoring outwards to a distance of 1 km during all impact pile driving.

PSOs shall provide 100% coverage for marine mammal exclusion zones and conduct monitoring out to the extent of the relevant Level B harassment zones for vibratory pile driving, vibratory sheet pile driving, vibratory sheet pile extraction, and sheet sawing for at least the majority of time spent (>50%) conducting each of the four activities.

PSOs shall be provided with the equipment necessary to effectively monitor for marine mammals (for example, high-quality binoculars, compass, and range-finder as well as a digital SLR camera with telephoto lens and video capability) in order to determine if animals have entered into the exclusion zone or Level B harassment isopleth and to record species, behaviors, and responses to pile driving.

Reporting

ME DOT is required to submit a report to NMFS within 90 days of completion of in-water construction activities. The report would include data from marine mammal sightings (such as date, time, location, species, group size, and behavior), any observed reactions to construction, distance to operating pile hammer, and construction activities occurring at time of sighting and environmental data for the period (wind speed and direction, Beaufort sea state, cloud cover, and visibility).

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury, or mortality, ME DOT would immediately cease the specified activities and immediately report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Shane.Guan@noaa.gov* and the Greater Atlantic Regional Fisheries Office Stranding Coordinator (*Mendy.Garron@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 hrs 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 hrs 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 would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with ME DOT to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ME DOT may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that ME DOT discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), ME DOT would immediately report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Shane.Guan@noaa.gov* and the Greater Atlantic Regional Fisheries Office Stranding Coordinator at 978–281–9300 (*Mendy.Garron@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 would work with ME DOT to determine whether modifications in the activities are appropriate.

In the event that ME DOT discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ME DOT would report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Shane.Guan@noaa.gov* and the NMFS Stranding Hotline (866–755–6622) and/or by email to the Greater Atlantic Regional Fisheries Office Stranding Coordinator (*Mendy.Garron@noaa.gov*), within 24 hrs of the discovery. ME DOT would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

Estimated Take of 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].

As discussed above, in-water pile driving (vibratory and impact) and pile removal generate loud noises that could potentially harass marine mammals in the vicinity of the ME DOT's proposed Eastport breakwater replacement project.

Currently, NMFS uses 120 dB re 1 μPa and 160 dB re 1 μPa at the received levels for the onset of Level B harassment for non-impulse (vibratory pile driving and removal) and impulse sources (impact pile driving) underwater, respectively. Table 3 summarizes the current NMFS marine mammal take criteria.

TABLE 3—CURRENT ACOUSTIC EXPOSURE CRITERIA FOR 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 (cetaceans)/190 dB re 1 μPa (pinnipeds) root mean square (rms).
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 μPa (rms).
Level B Harassment	Behavioral Disruption (for non-impulse noise)	120 dB re 1 μPa (rms).

Distances to NMFS' harassment thresholds were calculated based on the expected sound levels at each source and the expected attenuation rate of sound (Table 1). The 30-m distance to the Level A harassment threshold provides PSOs plenty of time and adequate visibility to prevent marine mammals from being exposed to sound levels that reach the Level A harassment threshold during impact pile driving.

The estimated number of marine mammals potentially taken is based on ORPC's marine mammal monitoring observations between 2007 and 2010. Based on marine mammal sightings during that period, further consultation between ORPC and NMFS, and the estimated number of pile driving and underwater sawing days for the Eastport Breakwater project, ME DOT requests authorization for the incidental take of 456 seals (because they cannot always be identified to the species-level), 456 harbor porpoises, and 76 Atlantic white-sided dolphins. The estimated take is based on the maximum group size of animals observed during ORPC's marine mammal observations multiplied by the maximum expected number of pile driving and underwater sawing days.

Analysis and 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.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

ME DOT's proposed Eastport breakwater replacement project would

involve pile driving and removal activities as well as the use of an underwater saw. Elevated noise levels are expected to be generated as a result of these activities. However, ME DOT would use noise attenuation devices (e.g., pile cushions, bubble curtains) during impact pile driving to ensure that sound levels of 180 dB (rms) do not extend more than 10 m from the pile, which eliminates the potential for injury (PTS) and TTS. Given the required mitigation and monitoring, no injuries or mortalities are anticipated to occur as a result of ME DOT's proposed action in Eastport, and none are proposed to be authorized. In addition, as described above, marine mammals in the area would not be exposed to activities or sound levels which would result in hearing impairment (TTS or PTS) or non-auditory physiological effects. The small number of takes that are anticipated to occur would be limited to short-term Level B harassment.

In-water construction activities would occur in relatively shallow coastal waters of Cobscook Bay. The proposed project area is not considered significant habitat for marine mammals. Marine mammals approaching the action area would likely be traveling or opportunistically foraging. There are no rookeries or major haul-out sites nearby, foraging hotspots, or other ocean bottom structure of significant biological importance to marine mammals that may be present in the marine waters in the vicinity of the project area. The closest significant pinniped haul out is more than 6 nm away (ME DOT, pers. comm.), which is well outside the project area's largest harassment zone. The proposed project area is not a prime habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic noise associated with breakwater replacement activities are expected to affect only a small number of marine mammals on an infrequent basis. Although it is possible that some individual marine mammals may be exposed to sounds from in-water construction activities more than once, the duration of these multi-exposures is expected to be low since animals would be constantly moving in and out of the area and in-water construction activities would not occur continuously throughout the day.

Marine mammals may be temporarily impacted by noise from pile driving activities and the operation of an underwater saw. These low intensity, localized, and short-term noise exposures may cause brief startle reactions or short-term behavioral modifications by the animals. These reactions and behavioral changes are expected to subside quickly when the exposures cease. Moreover, marine mammals are expected to avoid the area during in-water construction because animals generally move away from active sound sources, thereby reducing exposure and impacts. In addition, through mitigation measures including soft start, marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious, and detection of marine mammals by observers would enable the implementation of shutdowns to avoid injury, serious injury, or mortality. In-water construction activities involving pile driving and underwater sawing are expected to occur for about 12 days total each month. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in fitness to those individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the project area while the activity is occurring.

Based on the application and subsequent analysis, the impact of the described in-water construction activities may result in, at most, short-term modification of behavior by small numbers of marine mammals within the action area. No injury, serious injury, or mortality is expected to occur and due to the nature, degree, and context of the Level B harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

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 finds that the total marine mammal take from the Eastport breakwater replacement activity will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

The amount of take NMFS proposes to authorize is considered small (less than one percent) relative to the estimated populations of 70,142 harbor seals, 250,000 gray seals, 79,883 harbor porpoises, and 48,819 Atlantic white-sided dolphins. 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 finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No species listed under the ESA are expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS prepared an Environmental Assessment (EA) to consider the environmental impacts of issuance of a one-year IHA. A Finding of No Significant Impact was signed on September 24, 2014.

Authorization

NMFS has issued an IHA to ME DOT for the potential harassment of small numbers of marine mammal species incidental to its Eastport breakwater replacement project Eastport, Maine, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 26, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–23340 Filed 9–30–14; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Reestablishment of the Technology Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Technology Advisory Committee reestablishment.

SUMMARY: The Commodity Futures Trading Commission (Commission) is publishing this notice to announce the reestablishment of the Technology Advisory Committee (TAC). The Commission has determined that reestablishment of the TAC is necessary and in the public's interest. No earlier than fifteen (15) days following the date of the publication of this notice, the TAC Charter will be filed with the Commission; the Senate Committee on Agriculture, Nutrition and Forestry; the House Committee on Agriculture; the Library of Congress; and the General Services Administration's Committee Management Secretariat.

ADDRESSES: Written comments should be submitted to the attention of Christopher Kirkpatrick, Secretary of the Commission, either electronically to *secretary@cftc.gov* or by mail to Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Please submit your comments using only one method and identify that you are commenting on the TAC's reestablishment.

FOR FURTHER INFORMATION CONTACT: Ted Serafini, Counsel and Policy Advisor, at 202–418–5972.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App. II, the Commission is publishing this notice to announce the reestablishment of the TAC. The Commission has determined that the reestablishment of the TAC is necessary and in the public interest. The objectives and scope of activities of the TAC are to conduct public meetings, to submit reports and recommendations to the Commission, and to otherwise assist the Commission in identifying and understanding how new developments in technology are being applied and utilized in the industry, and their impact on the operation of the markets. The TAC will allow the Commission to be an active participant in market innovation, explore the appropriate investment in technology, and advise the Commission on the need for strategies to implement rules and regulations to support the Commission's mission of ensuring the integrity of the markets. Meetings of the TAC are open to the public.

The TAC will operate for two years from the date of reestablishment unless, before the expiration of that time period, its charter is renewed in accordance with section 14(b)(1) of the FACA, or the Commission directs that the TAC terminate on an earlier date. A copy of the TAC reestablishment charter will be filed with the Commission; the Senate Committee on Agriculture, Nutrition and Forestry; the House Committee on Agriculture; the Library of Congress; and the General Services Administration's Committee Management Secretariat. A copy of the reestablishment charter will be posted on the Commission's Web site at *www.cftc.gov.*

Issued in Washington, DC, on September 26, 2014, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2014–23355 Filed 9–30–14; 8:45 am]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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 (PRA) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed Senior Corps Longitudinal Study instrument. The study involves a longitudinal evaluation of the impact of participation in National Senior Service Corps (Senior Corps) services on both Senior Corps members and the beneficiaries of Senior Corps services. Study One examines the impact of Senior Companion Program services on levels of stress, self-rated health, and symptoms of depression in caregivers of clients receiving respite services and family caregivers of clients receiving independent living services. Study Two examines the impact of service in Senior Corps' Senior Companion Program (SCP) and Foster Grandparent Program (FGP) on members level of satisfaction, self-efficacy, self-rated health, symptoms of depression and loneliness.

The survey will be administered over three data collection periods, Baseline, Year 1 and Year 2.

Copies of the information collection request can be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by December 1, 2014.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Senior Corps Program; Attention Anthony Nerino, Research Associate, Office #10913A; 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) Electronically through the Corporation's email system to *anerino@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.

FOR FURTHER INFORMATION CONTACT: Anthony Nerino, (202–606–3913), or by email at *anerino@cns.gov.*

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- 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;
- 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 expected 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).

Background

CNCS has submitted a Request for Proposal soliciting technical assistance to implement a longitudinal study of Senior Corps' FGP and SCP in order to identify the long term impact on caregivers of SCP respite service and SCP independent living services. Additionally, CNCS seeks to assess the long term impact of participation in the FGP and SCP on members' satisfaction, health related outcomes and psycho-social outcomes.

This project involves a survey of: caregivers to individuals who are recipients of independent living services; caregivers to individuals receiving respite care services; and FGP and SCP members. Potential survey respondents will be drawn from a list of registered beneficiaries provided by a sample of SCP grantees. SCP and FGP members will be drawn from a list of registered members provided by a sample of SCP and FGP grantees. Potential interview respondents will include beneficiaries, caregivers and FGP/SCP members. Survey data will be collected using a multi-modal survey methods including phone surveys, paper surveys and on-line surveys.

Quantitative data analysis will include descriptive statistics and inferential analysis of survey responses by respondent characteristics. Analyses will focus on identifying demographic factors of recipients and members, and on self-reported health status and psycho-social factors including self-efficacy, loneliness and depression.

Current Action

CNCS seeks public comment on a new data collection instrument and a set of interview questions developed for this project. The instrument and interview questionnaire is being designed by the contractor for this project.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Senior Corps Longitudinal Study.

OMB Number: None.

Agency Number: None.

Affected Public: Senior Corps SCP service recipients and SCP/FGP members.

Total Respondents: Surveys 2,200.

Frequency: Three times.

Average Time per Response: 30 minutes.

Respondent category	Number	Time (minutes)	Total hours
SCP Caregiver Longitudinal Study	1,200	30	600
FGP and SCP Longitudinal Volunteer Study Interview Participants	1,000	30	500

Estimated Total Burden Hours: 1,100.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 25, 2014.

Stephen Plank,

Director, Research and Evaluation.

[FR Doc. 2014–23392 Filed 9–30–14; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Navy

2014 Institutional Accreditation of the U.S. Naval War College by the Commission on Institutions of Higher Education, New England Association of Schools and Colleges

AGENCY: Department of the Navy, DoD.

ACTION: Notice of public comment period.

SUMMARY: The U.S. Naval War College will undergo a comprehensive evaluation visit on November 2–5, 2014, by a team representing the Commission on Institutions of Higher Education (CIHE) of the New England Association of Schools and Colleges.

CIHE is one of seven accrediting commissions in the United States that provide institutional accreditation on a regional basis. Accreditation is voluntary and applies to the institution as a whole. The Commission, which is recognized by the U.S. Department of Education, accredits approximately 240 institutions in the six-state New England region.

The Naval War College has been accredited by the Commission since 1989 and was last reviewed in 2004. Its accreditation by the New England Association encompasses the entire institution.

For the past year and one half, the Naval War College has been engaged in a process of self-study, addressing the Commissions's Standards for Accreditation. An evaluation team will visit the institution to gather evidence that the self-study is thorough and accurate. The team will recommend to the Commission a continuing status for the institution. Following a process review, the Commission itself will take the final action.

The public is invited to submit comments regarding the institution to: Public Comment on the Naval War College, Commission on Institutions of Higher Education, New England Association of Schools and Colleges, 3 Burlington Woods Drive, Suite 100, Burlington, MA 01803–4514, Email: *cihe@neasc.org.*

Public comments must address substantive matters related to the quality of the institution. The Commission cannot settle disputes between individuals and institutions, whether those involve faculty, students, administrators, or members of other groups. Comments will not be treated as confidential and must include the name, address, and telephone number of the person providing the comments. Public comments must be received by November 5, 2014. The Commission cannot guarantee that comments received after that date will be considered.

FOR FURTHER INFORMATION CONTACT: Mr. Richard R. Menard, Office of the Provost, U.S. Naval War College, 686 Cushing Road, Newport, RI 02841; email *richard.menard@usnwc.edu;* 401–841–7004.

Dated: September 24, 2014.

P.A. Richelmi,

Lieutenant, Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2014–23387 Filed 9–30–14; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0138]

Agency Information Collection Activities; Comment Request; Evaluation of the Comprehensive Technical Assistance Centers

AGENCY: Institute of Education Sciences/ National Center for Education Statistics (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before December 1, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0138 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E115, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Amy Johnson, 202–208–7849.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Evaluation Of The Comprehensive Technical Assistance Centers.

OMB Control Number: 1850–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 870.

Total Estimated Number of Annual Burden Hours: 350.

Abstract: The National Evaluation of the Comprehensive Technical Assistance Centers will examine and document how the Comprehensive Center program and its individual centers intend to build SEA capacity and what types of activities they actually conduct to build capacity. The study will use surveys and interviews of center staff and technical assistance recipients, as well as technical assistance event observations, to collect information about how the Comprehensive Centers design their work, how they operate, and the results of their work.

Dated: September 25, 2014.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–23302 Filed 9–30–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Quadrennial Energy Review: Notice of Public Meeting

AGENCY: Office of Energy Policy and Systems Analysis, Secretariat, Quadrennial Energy Review Task Force, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: At the direction of the President, the U.S. Department of Energy (DOE or Department), as the Secretariat for the Quadrennial Energy Review Task Force (QER) Task Force will convene a public meeting to discuss and receive comments on issues related to the Quadrennial Energy Review.

DATES: The thirteenth public meeting will be held on October 6, 2014, beginning at 9:00 a.m. Written comments are welcome, especially following the public meeting, and must be submitted by October 10, 2014.

ADDRESSES: The thirteenth meeting will be held at the New York University Kimmel Center for University Life, Room 914, 60 Washington Square South, New York, New York 10010.

You may submit written comments to: *QERComments@hq.doe.gov* or by U.S. mail to the Office of Energy Policy and Systems Analysis, EPSA–60, QER Meeting Comments, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0121.

For the thirteenth public meeting, please title your comment ''Energy Infrastructure Finance QER Meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Adonica Renee Pickett, EPSA–90, U.S. Department of Energy, Office of Energy Policy and Systems Analysis, 1000 Independence Avenue SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9168 *Email:Adonica.Pickett@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 9, 2014, President Obama issued a *Presidential Memorandum—Establishing a Quadrennial Energy Review.* To accomplish this review, the Presidential Memorandum establishes a Quadrennial Energy Review Task Force to be co-chaired by the Director of the Office of Science and Technology Policy, and the Director of the Domestic Policy Council. Under the Presidential Memorandum, the Secretary of Energy shall provide support to the Task Force, including support for coordination activities related to the preparation of the Quadrennial Energy Review Report, policy analysis and modeling, and stakeholder engagement.

The DOE, as the Secretariat for the Quadrennial Energy Review Task Force, will hold a series of public meetings to discuss and receive comments on issues related to the Quadrennial Energy Review.

The initial focus for the Quadrennial Energy Review will be our Nation's infrastructure for transporting, transmitting, storing and delivering energy. Our current infrastructure is increasingly challenged by transformations in energy supply, markets, and patterns of end use; issues

of aging and capacity; impacts of climate change; and cyber and physical threats. Any vulnerability in this infrastructure may be exacerbated by the increasing interdependencies of energy systems with water, telecommunications, transportation, and emergency response systems. The first Quadrennial Energy Review Report will serve as a roadmap to help address these challenges.

The Department of Energy has a broad role in energy policy development and the largest role in implementing the Federal Government's energy research and development portfolio. Many other executive departments and agencies also play key roles in developing and implementing policies governing energy resources and consumption, as well as associated environmental impacts. In addition, non-Federal actors are crucial contributors to energy policies. Because most energy and related infrastructure is owned by private entities, investment by and engagement of the private sector is necessary to develop and implement effective policies. State and local policies; the views of nongovernmental, environmental, faith-based, labor, and other social organizations; and contributions from the academic and non-profit sectors are also critical to the development and implementation of effective energy policies.

An interagency Quadrennial Energy Review Task Force, which includes members from all relevant executive departments and agencies (agencies), will develop an integrated review of energy policy that integrates all of these perspectives. It will build on the foundation provided in the Administration's *Blueprint for a Secure Energy Future* of March 30, 2011, and *Climate Action Plan* released on June 25, 2013. The Task Force will offer recommendations on what additional actions it believes would be appropriate. These may include recommendations on additional executive or legislative actions to address the energy challenges and opportunities facing the Nation.

October 6 Public Meeting: Energy Infrastructure Finance

On October 6, 2014, the DOE will hold a public meeting in New York City. The October 6, 2014 public meeting will feature facilitated panel discussions, followed by an open microphone session. People desiring to speak during the open microphone session at the public meeting should come prepared to speak for no more than five minutes and will be accommodated on a first-come, first-served basis, according to the order in which they register to speak on a sign-in sheet available at the meeting location, on the morning of the meeting.

In advance of the meeting, DOE anticipates making publicly available a briefing memorandum providing useful background information regarding the topics under discussion at the meeting. DOE will post this memorandum on its Web site: *http://energy.gov*.

Submitting comments via email. Submitting comments by email to the QER email address will require you to provide your name and contact information in the transmittal email. Your contact information will be viewable to DOE staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). Your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

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

If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

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

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

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

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest. It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Issued in Washington, DC, on September 25, 2014.

Michele Torrusio,

QER Secretariat, QER Interagency Task Force, U.S. Department of Energy.

[FR Doc. 2014–23423 Filed 9–30–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. PP–362]

Record of Decision for Issuing a Presidential Permit to Champlain Hudson Power Express, Inc., for the Champlain Hudson Power Express Transmission Line Project

AGENCY: Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy.

ACTION: Record of decision.

SUMMARY: The Department of Energy (DOE) announces its decision to issue a Presidential permit to Champlain Hudson Power Express, Inc. (CHPEI), to construct, operate, maintain, and connect an electric transmission line across the U.S./Canada border in northeastern New York State. The potential environmental impacts associated with the transmission line are analyzed in the *Environmental Impact Statement for the Champlain Hudson Power Express Transmission Line Project* (DOE/EIS–0447). The transmission line would cross the U.S./Canada border near the town of Champlain, New York, and extend southward approximately 336 miles to the Consolidated Edison Company of New York, Inc., (ConEd) Rainey substation in Queens, New York.

ADDRESSES: The Final Environmental Impact Statement (EIS) and this Record of Decision (ROD) are available on the DOE National Environmental Policy Act (NEPA) Web site at *http://nepa.energy.gov/* and on the Champlain Hudson Power Express (CHPE) EIS Web site at *http://www.chpexpresseis.org.* Copies of the Final EIS and ROD are also available for review at the following locations:

- Queens Library—Steinway, 21–45 31 Street (Ditmars Boulevard), Long Island City, NY 11105.
- Yonkers Public Library—Riverfront Library, 1 Larkin Center, Yonkers, NY 10701.
- Rose Memorial Library, 79 East Main Street, Stony Point, NY 10980.
- Kingston Public Library, 55 Franklin Street, Kingston, NY 12401.
- Schenectady County Public Library, 99 Clinton Street, Schenectady, NY 12305.
- Crandall Public Library, 251 Glen Street, Glens Falls, NY 12801.
- Plattsburgh Public Library, 19 Oak Street, Plattsburgh, NY 12901.

Copies of the Final EIS and this ROD may be requested by contacting Mr. Brian Mills, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; phone 202–586–8267; email *Brian.Mills@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: For further information on the CHPE Project EIS, contact Mr. Brian Mills as indicated in the **ADDRESSES** section above. For general information on the DOE NEPA process, contact Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; email *askNEPA@hq.doe.gov;* or facsimile to 202–586–7031.

SUPPLEMENTARY INFORMATION:

Background

Executive Order (EO) 10485 (September 9, 1953), as amended by EO 12038 (February 7, 1978), requires that a Presidential permit be issued by DOE before electricity transmission facilities may be constructed, operated, maintained, or connected at the U.S. border. DOE may issue or amend a permit if it determines that the permit is in the public interest and after obtaining favorable recommendations from the U.S. Departments of State and Defense. In determining whether issuance of a permit for a proposed action is in the public interest, DOE considers the potential environmental impacts of the proposed project, the project's impact on electricity reliability by ascertaining whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions, and any other factors that DOE considers relevant to the public interest.

On January 25, 2010, CHPEI, a private company, applied to DOE for a Presidential permit to construct, operate, maintain, and connect a 1,000-megawatt (MW), high-voltage direct current (HVDC) merchant electric power transmission system across the U.S./Canada border. The proposed CHPE Project would cross the international border from Canada into the U.S. under water in the Town of Champlain, New York, and extend approximately 336 miles (541 kilometers [km]) south through New York State to Queens, New York. The aquatic portions of the transmission line would primarily be buried in sediments of Lake Champlain and the Hudson, Harlem, and East rivers; concrete mats would be used where the line could not be buried due to presence of exposed bedrock or crossing of other utility infrastructure. The terrestrial portions of the line would be buried within existing roadway and railroad rights-of-way. The project would include installation and operation of approximately 16 cooling stations along the terrestrial portions of the route and an HVDC converter station in Astoria, Queens, New York. The proposed line would be constructed and owned by CHPEI.

Consultation

Pursuant to Section 7 of the Endangered Species Act, DOE has consulted with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) regarding the potential impacts on federally listed threatened or endangered species in the area of the proposed CHPE Project, and DOE has prepared a Biological Assessment (BA). The USFWS on September 10, 2014, submitted a letter to DOE concurring with the findings of the Final EIS and the BA that the proposed CHPE Project: ''may affect, but is not likely adversely affect the endangered Indiana bat (*Myotis sodalis*), Karner blue butterfly (*Lycaeides melissa samuelis*), or the proposed endangered northern long-eared bat (*Myotis septentrionalis*)'' and would result in no effect to other listed species. Based on these comments, DOE is conditioning its Presidential permit to require the Applicant to comply with all practicable means to avoid or minimize environmental harm from the alternative selected as required by the USFWS. The NMFS concurred on September 18, 2014, with DOE's findings that ''the CHPE project is not likely to adversely affect any ESA-listed species under our jurisdiction during construction or over the lifetime of its operation. Therefore, no further consultation pursuant to section 7 of the ESA is required.''

DOE has also consulted with the NMFS regarding impacts pursuant to the Magnuson-Stevens Fishery Conservation and Management Act and has prepared an Essential Fish Habitat (EFH) Assessment. NMFS provided its conservation recommendations (to suspend in-water work during spawning, early life stages, and migration seasons of aquatic species; monitor re-establishment of conditions and contours after transmission line installation; and establish a compensatory mitigation plan for adverse impacts to aquatic habitats) on August 19, 2014. DOE has no objection to these recommendations.

Consultation with the New York State Historic Preservation Office (SHPO) under Section 106 of the National Historic Preservation Act has also occurred and a historic properties programmatic agreement (PA) between DOE and the New York SHPO has been

executed. The PA requires CHPE to prepare a Cultural Resources Management Plan, which will meet the survey, data collection and mitigation measures necessary as identified by the New York SHPO.

NEPA Review

On June 18, 2010, DOE issued a Notice of Intent (NOI) (75 FR 34720) to prepare an EIS for the CHPE Project and conducted public scoping. On April 30, 2012, DOE issued an Amended NOI to modify the scope of the EIS to reflect Applicant-proposed revisions to the proposed CHPE Project and conducted additional public scoping (77 FR 25472).

On November 1, 2013, the U.S. Environmental Protection Agency (EPA) published a Notice of Availability (NOA) of the Draft EIS (78 FR 65643), that began a 45-day public review period, which DOE later extended by 30 days (78 FR 76140). DOE held four public hearings on the Draft EIS and received more than 100 comments on the Draft EIS. Concerns raised in these comments included potential impacts on navigation safety (e.g., whether anchors would snag the transmission line or material placed over the line), aquatic and terrestrial protected and sensitive species, historic resources (including gravesites, particularly near Stony Point, New York, where the transmission line would be installed under historic sites via horizontal directional drilling) and transportation and traffic. Throughout the EIS process, DOE worked with the cooperating agencies to ensure that impacts will be appropriately addressed. DOE considered all comments received on the Draft EIS in the preparation of the Final EIS. DOE issued the Final EIS in August 2014 (79 FR 48140).

The U.S. Environmental Protection Agency (USEPA) Region 2, the New York District of the U.S. Army Corps of Engineers (USACE), the New York Field Office (Region 5) of the USFWS, the U.S. Coast Guard (USCG), the New York State Department of Public Service (NYSDPS), and the New York State Department of Environmental Conservation (NYSDEC) were identified and participated as cooperating agencies in the preparation of the EIS. The U.S. Army Corps of Engineers will use the EIS in its decisionmaking for the permits required pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. The Corps will issue its own ROD.

Alternatives Considered

In the EIS, DOE analyzed the No Action Alternative and the Proposed Action of granting the Presidential permit for the construction, operation, maintenance, and connection of the proposed CHPE Project facilities. Under the No Action Alternative, DOE would not issue a Presidential permit for the proposed CHPE Project and the transmission line would not be built. Under the Proposed Action of granting the Presidential permit (the DOE Preferred Alternative), the transmission line would be constructed from the U.S./Canada border to the ConEd substation in Queens, New York.

Analysis of Environmental Impacts

The EIS analyzes potential environmental impacts associated with the alternatives for each of the following resource areas: Land use, transportation and traffic, water resources and quality, aquatic and terrestrial habitats and species, aquatic and terrestrial protected and sensitive species, wetlands, geology and soils, cultural resources, visual resources, infrastructure, recreation, public health and safety, hazardous materials and wastes, air quality, noise, socioeconomics, environmental justice, and cumulative impacts.

Analysis of the potential environmental impacts of the Proposed Action on each resource area (Section 5 of the EIS) assumes the implementation of all CHPEI-proposed measures to avoid or minimize adverse impacts (Appendix G of the EIS).

In a floodplain statement of findings (Appendix S of the EIS), DOE prepared a floodplain assessment and has determined that the proposed CHPE Project would avoid floodplains to the maximum extent practicable, that appropriate measures to minimize potential harm to or within the floodplains would be taken, and that the project would comply with applicable floodplain protection standards.

Implementation of the No Action Alternative would not result in changes to existing conditions in these resource areas and is, therefore, the environmentally preferable alternative.

Comments Received on the Final EIS

On September 12, 2014, the USACE submitted a comment letter on the Final EIS that states that the Applicant has supplemented its Clean Water Act Section 404 permit application, which demonstrates a change in the proposed CHPE Project's wetland impacts as follows:

- The proposed CHPE Project's permanent impact on forested wetlands would be reduced to 0.6 acres from 2.0 acres, and
- The proposed CHPE Project's permanent impact on emergent or scrub-shrub wetlands would increase from 8.3 acres to 9.7 acres.

These revised impact calculations do not result in any change in the wetland impact findings in the Final EIS.

On September 15, 2014, comments were received from Gale Pisha, a private citizen, through the CHPE EIS Web site asking that the Presidential permit not be issued and providing comments with respect to how the EIS addressed impacts in Canada, possible effects on electricity supplies and prices in New York State, the use of park land, and possible safety concerns from cumulative impacts due to the construction of the proposed CHPE line and an identified, foreseeable natural gas pipeline project. Discussion and analysis of these issues are adequately addressed in the Final EIS in Sections 1.7.4 (impacts in Canada), 1.2 (electricity supplies), 1.4 (electricity pricing in New York State), 5.2.1 (use of park land), and 2.4.9 and 2.4.10 (cumulative impacts).

The Port of New York/New Jersey Tug and Barge Committee submitted a letter dated September 8, 2014, stating that they continued to oppose the issuance of a Presidential permit due to the potential for anchor snags and interference with compass readings. Section 5.1.2 of the Final EIS addressed these issues and determined that such impacts from the project to anchor snags and interference to compass readings would not be considered significant. The NYSDPS submitted a comment letter on the Final EIS on September 15, 2014, stating that the EIS analysis and mitigation measures are consistent with the terms and conditions of the Certificate of Environmental Compatibility and Public Need issued by the New York State Public Service Commission (NYSPSC).

The American Waterways Operators (AWO) submitted a letter dated September 15, 2014, stating that they oppose the issuance of a Presidential permit due to the potential for anchor snags unless the cable is buried to at least 15 feet in depth in Congressionally-authorized channels. Anchor snags and burial depths are addressed in Sections 5.1.2 and 5.3.2 of the Final EIS and it was determined that impacts from such would not be considered significant.

The USCG commented on September 15, 2014, that additional consultation and measures are required to reduce the potential impacts on mariners and the environment from risks associated with constructing and operating the transmission line, including the potential for anchor snags. Based on these comments, DOE is conditioning its

Presidential permit to require the Applicant to undertake a revised Navigation Risk Assessment in consultation with the USCG, and to involve the USCG in the preparation of the Environmental Management & Construction Plan with respect to the final location and design of the transmission cables and the communication procedures and notifications for the construction and operation of the transmission line.

New York State Assemblyman James Skoufis provided a comment letter on September 15 that identified an inconsistency with maps of the project route, expressed a concern over when and where the Applicant might use eminent domain to acquire property, and questioned whether the EIS adequately addressed the potential impacts of construction of the proposed CHPE Project on overland areas within Rockland County. DOE notes that the route maps used in the EIS are the same as provided to the NYSPSC by the Applicant and incorporated into the Certificate issued by the NYSPSC, that any land acquisitions would be conducted in accordance with New York State law and as provided in the NYSPSC Certificate, and that land acquisition and construction impacts in Rockland County are addressed in EIS Sections 5.3.1, 5.3.3, 5.3.9, and 5.3.17, respectively.

All comments received on the Final EIS are available in the CHPE EIS Web site Document Library.

Decision

DOE has decided to issue Presidential Permit PP–362 to authorize CHPEI to construct, operate, maintain, and connect a 1,000–MW HVDC transmission line across the U.S./Canada border. The permit will include conditions requiring CHPEI to implement the Applicant-proposed avoidance and minimization measures identified in the EIS, as well as those conditions described above concerning the USFWS and USCG.

Basis for Decision

DOE's decision to grant this Presidential permit is based on consideration of the potential environmental impacts, impacts on the reliability of the U.S. electric power supply system under normal and contingency conditions, and the favorable recommendations of the U.S. Departments of State and Defense (which were provided, respectively, in February and June of 2014).

DOE determined that the proposed international electric transmission line would not have an adverse impact on the reliability of the U.S. electric power supply system. In reaching this determination, DOE considered the operation of the electrical grid with a specified maximum amount of electric power transmitted over the proposed line. DOE reviewed the reliability studies conducted by CHPEI and by New York Independent System Operator (NYISO). These studies are available on the CHPE EIS Web site at *http://www.chpexpresseis.org.* DOE also considered NYISO's interconnection standards and its restrictions on any requested transmission service to and from the proposed interconnection.

DOE did not select the No Action Alternative because the Proposed Action has been determined to be consistent with the public interest.

Mitigation

All practicable means to avoid or minimize environmental harm from the alternative selected have been, or will be, adopted. CHPEI-proposed measures to avoid and minimize adverse impacts are described in the EIS, the EFH Assessment, and the BA, and were further refined through consultations with the USFWS, USCG, USACE, and NMFS. All of these measures were incorporated into the Final EIS. CHPEI will be responsible for implementing these avoidance and minimization measures. Additional measures will be required as a result of ongoing consultations (e.g., regarding Clean Water Act Section 404, the Cultural Resources Management Plan) between CHPEI and state and federal agencies as part of approval and permitting processes.

Issued in Washington, DC, on September 24, 2014.

Patricia A. Hoffman,

Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2014–23421 Filed 9–30–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–1616–002*; EL14–41–001.*

Applicants: NorthWestern Corporation.

Description: Joint Offer of Settlement of NorthWestern Corporation, et al.

Filed Date: 9/23/14.

Accession Number: 20140923–5024.

Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: ER14–2466–001.

Applicants: RE Camelot LLC.

Description: Tariff Amendment per 35.17(b): Amendment to Baseline Filing—RE Camelot LLC to be effective 9/7/2014.

Filed Date: 9/24/14.

Accession Number: 20140924–5111.

Comments Due: 5 p.m. ET 10/15/14.

Docket Numbers: ER14–2548–001.

Applicants: Ocean State Power.

Description: Tariff Amendment per 35.17(b): Amendment to Notice of Succession to be effective 9/22/2014.

Filed Date: 9/22/14.

Accession Number: 20140922–5093.

Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: ER14–2933–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Service Agreement No. 335—Mead Substation Interconnection Agreement to be effective 11/24/2014.

Filed Date: 9/24/14.

Accession Number: 20140924–5082.

Comments Due: 5 p.m. ET 10/15/14.

Docket Numbers: ER14–2934–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): PJM Service Agreement No. 3503 (Queue No. X4–031) to be effective 8/25/2014.

Filed Date: 9/24/14.

Accession Number: 20140924–5090.

Comments Due: 5 p.m. ET 10/15/14.

Docket Numbers: ER14–2935–000.

Applicants: Arizona Public Service Company.

Description: Tariff Withdrawal per 35.15: Cancellation of Service Agreement No. 331 to be effective 11/24/2014.

Filed Date: 9/24/14.

Accession Number: 20140924–5106.

Comments Due: 5 p.m. ET 10/15/14.

Docket Numbers: ER14–2936–000.

Applicants: Sunbury Generation LP.

Description: Tariff Withdrawal per 35.15: Sunbury Reactive Supply Tariff Cancellation to be effective 9/24/2014.

Filed Date: 9/24/14.

Accession Number: 20140924–5107.

Comments Due: 5 p.m. ET 10/15/14.

Docket Numbers: ER14–2937–000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): ATSI submits Revised SA No. 2852 and Service Agreement Nos. 3931 and 3932 to be effective 11/20/2014.

Filed Date: 9/24/14.

Accession Number: 20140924–5131.
Comments Due: 5 p.m. ET 10/15/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 24, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–23349 Filed 9–30–14; 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: EC14–148–000.
Applicants: Duke Energy Progress, Inc.
Description: Application for Authorization under Section 203 of the Federal Power Act of Duke Energy Progress, Inc.
Filed Date: 9/23/14.
Accession Number: 20140923–5173.
Comments Due: 5 p.m. ET 10/14/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2881–014; ER10–2882–014; ER10–2883–014; ER10–2884–014; ER10–2885–014; ER10–2641–014; ER10–2663–014; ER10–2886–014; ER13–1101–009; ER13–1541–008; ER14–787–002.
Applicants: Alabama Power Company, Southern Power Company, Mississippi Power Company, Georgia Power Company, Gulf Power Company, Oleander Power Project, LP, Southern Company-Florida LLC, Southern Turner Cimarron I, LLC, Spectrum Nevada Solar, LLC, Campo Verde Solar, LLC, Macho Springs Solar, LLC.
Description: Supplement to June 30, 2014 Updated Market Power Analysis of Alabama Power Company, et al.
Filed Date: 9/23/14.
Accession Number: 20140923–5175.
Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: ER14–473–001.
Applicants: New York Independent System Operator, Inc.
Description: Compliance filing regarding the Web site posting location and timing of such posting concerning certain Area Control Error data of New York Independent System Operator, Inc.
Filed Date: 9/23/14.
Accession Number: 20140923–5182.
Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: ER14–2631–000; ER14–2635–000; ER14–2632–000; ER14–2637–000; ER14–2636–000; ER14–2638–000; ER14–2633–000; ER14–2634–000.
Applicants: Atlantic City Electric Company, Bethlehem Renewable Energy, LLC, Delmarva Power & Light Company, Eastern Landfill Gas, LLC, Fauquier Landfill Gas, LLC, Pepco Energy Services, Inc., Potomac Electric Power Company, Potomac Power Resources, LLC.
Description: Supplement to August 12, 2014 Atlantic City Electric Company, et al. tariff filings and Notice of Succession.
Filed Date: 9/23/14.
Accession Number: 20140923–5172.
Comments Due: 5 p.m. ET 10/3/14.

Docket Numbers: ER14–2642–000; ER14–2644–000; ER14–2645–000; ER14–2646–000; ER14–2647–000; ER14–2648–000; ER14–2650–000; ER14–2651–000; ER14–2652–000.
Applicants: Dynegy Oakland, LLC, Dynegy Midwest Generation, LLC, Dynegy Kendall Energy, LLC, Casco Bay Energy Company, LLC, Dynegy Power Marketing, LLC, Dynegy Moss Landing, LLC, Dynegy Marketing and Trade, LLC, Ontelaunee Power Operating Company, LLC, Sithe/Independence Power Partners, L.P., Illinois Power Marketing Company.
Description: Amendment to August 13, 2014 and August 15, 2014 Dynegy Oakland, LLC, et al. tariff filings and Request for Shortened Comment Period under ER14–2642, et al.
Filed Date: 9/23/14.
Accession Number: 20140923–5160.
Comments Due: 5 p.m. ET 10/7/14.

Docket Numbers: ER14–2931–000.
Applicants: Calpine Fore River Energy Center, LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Notice of Succession and Revisions to Market-Based Rate Tariff to be effective 9/24/2014.
Filed Date: 9/23/14.
Accession Number: 20140923–5147.
Comments Due: 5 p.m. ET 10/14/14.

Docket Numbers: ER14–2932–000.
Applicants: Nevada Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Rate Schedule No. 136 Mead-Phoenix Project IOA Revised Exhibit F Concurrence to be effective 7/1/2014.
Filed Date: 9/23/14.
Accession Number: 20140923–5155.
Comments Due: 5 p.m. ET 10/14/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 24, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–23348 Filed 9–30–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2003–0200; FRL–9917–19]

Fenamiphos; Amendment to Existing Stocks Provision of Use Deletion and Product Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA issued a notice in the **Federal Register** of October 5, 2011, concerning an amendment to the use deletion and product cancellation order for the pesticide fenamiphos. This amendment followed a July 13, 2011 **Federal Register** Notice of Receipt of Request to Amend Use Deletion and Product Cancellation Order. The October 5, 2011 amendment to the cancellation order extended the deadline for persons other than the registrant to sell and distribute nemacur 3 emulsifiable systemic insecticide-

nematicide (EPA reg. no. 264–731) for 1-year, until October 5, 2012, and established an end-use date for existing stocks of all fenamiphos products of October 6, 2014. However, on August 5, 2014, the Agency received a request from the Golf Course Superintendents Association of America (GCSAA) to allow the continued use of existing fenamiphos stocks past the October 6, 2014, deadline in light of the stocks that remain in users' hands and the reported lack of effective alternatives to treat nematode infestations on established turf. Today's notice amends only the existing stocks provision of the October 5, 2011, amended cancellation order, providing an additional 3 years, until October 6, 2017, to use existing stocks of all fenamiphos products.

FOR FURTHER INFORMATION CONTACT:

Tracy L. Perry, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–0128; email address: *perry.tracy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The Agency included in the October 5, 2011 **Federal Register** notice a list of those who may be potentially affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2003–0200, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What are the terms of the amended cancellation order?

This notice announces the amendment of the December 10, 2003, use deletion and cancellation order of fenamiphos products registered under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended on June 11, 2008, December 10, 2008, and October 5, 2011. In the October 5, 2011 amendment to the use deletion and product cancellation order of fenamiphos, the Agency announced that it would prohibit use of existing stocks of all fenamiphos products after October 6, 2014. Today's notice changes the end-use date from October 6, 2014, to October 6, 2017. In GCSAA's request to extend the end-use date, they report that, according to the registrant at the time, Bayer Corporation, golf courses purchased the majority of fenamiphos stocks produced during the last year of the phase out in 2008. Golf course owners reportedly purchased a 10-year supply of fenamiphos, in many cases, as there was not a viable alternative to fenamiphos for use on turf and it was forecasted to take many years of research to identify one. The Agency established an end-use date in its October 5, 2011 amendment as the use of existing stocks had continued for an extended period since the last comprehensive risk assessment, which was completed for the 2002 Fenamiphos Reregistration Eligibility Decision. While this fact still holds true, the Agency was not aware of the volume of inventory in the hands of golf course owners at the time of the October 5, 2011, amendment. The Agency concludes that the more cost-effective and efficient option to exhaust the remaining stocks is to use the stocks as directed on product labeling rather than transporting hazardous substances over potentially lengthy distances to a pesticide disposal facility.

EPA hereby modifies the cancellation order of the December 10, 2003, use deletion and cancellation order of fenamiphos products, as amended on June 11, 2008, December 10, 2008, and October 5, 2011, to permit the use of existing stocks until October 6, 2017. Any use of such products must be in accordance with all terms of the previously-approved labeling. The distribution and sale provisions of the October 5, 2011, order remain unchanged and, therefore, any distribution or sale of fenamiphos products is prohibited, except for purposes of proper disposal or export consistent with FIFRA section 17.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 24, 2014.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2014–23397 Filed 9–30–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012293–001.

Title: Maersk/MSC Vessel Sharing Agreement.

Parties: A.P. Moller-Maersk A/S trading under the name of Maersk Line; and MSC Mediterranean Shipping Company S.A.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The amendment would expand the geographic scope to include France, ports on the Black Sea, and Indonesia.

Agreement No.: 012297.

Title: ECNA/ECSA Vessel Sharing Agreement.

Parties: Hamburg Sud; Alianca Navegacao e Logistica Ltds. E CIA; Norasia Container Lines Limited; Companhia Libra de Navegacao; Compania Libra de Navegacion Uruguay S.A.; Hapag-lloyd AG; and Nippon Yusen Kabushiki Kaisha.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The agreement would authorize the parties to share vessels in the trade between the U.S. East Coast, on the one hand, and countries on the East Coast of South America, on the other hand.

Agreement No.: 012298.

Title: Crowley/Seaboard Dominican Republic Space Charter and Sailing Agreement.

Parties: Crowley Caribbean Services, LLC; and Seaboard Marine, Ltd.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The agreement would authorize the parties to share vessels in the trade between Port Everglades, FL and Rio Haina, Dominican Republic.

By Order of the Federal Maritime Commission.

Dated: September 26, 2014.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2014–23380 Filed 9–30–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Acting Clearance Officer—John Schmidt—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:

Report title: Application for Employment with the Board of Governors of the Federal Reserve System.

Agency form number: FR 28, FR 28i, FR 28s.

OMB control number: 7100–0181.

Frequency: On Occasion.

Reporters: Employment applicants.

Estimated annual reporting hours: 3,558 hours.

Estimated average hours per response: FR 28: 1 hour; FR 28s: 1 minute; FR 28i: 5 minutes.

Number of respondents: FR 28: 3,500; FR 28s: 2,000; FR 28i: 300.

General description of report: This information collection is required to obtain a benefit and is authorized pursuant to Sections 10(4) and 11(1) of the Federal Reserve Act (12 U.S.C. 244 and 248(1)). Information provided will be kept confidential under exemption (b)(6) of the Freedom of Information Act to the extent that the disclosure of information ''would constitute a clearly unwarranted invasion of personal privacy.'' 5 U.S.C. 552(b)(6).

Abstract: The Application collects information to determine the qualifications and availability of applicants for employment with the Board such as information on education and training, employment record, military service record, and other information since the time the applicant left high school. Included with the Application are two supplemental questionnaires: (1) The Applicant's Voluntary Self-Identification Form (FR 28s), which collects information on the applicant's gender and ethnic group and (2) The Research Assistant (RA) Candidate Survey of Interests (FR 28i), which collects information from candidates applying for Research Assistant positions on their level of interest in economics and related areas.

Current Actions: On July 24, 2014, the Federal Reserve published a notice in the **Federal Register** (79 FR 43045) requesting public comment for 60 days on the extension, with revision, of the FR 28, FR 28i, and FR 28s. The comment period for this notice expired on September 22, 2014. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. *Report title:* Compensation and Salary Surveys.

Agency form number: FR 29a, b.

OMB control number: 7100–0290.

Frequency: FR 29a, annually; FR 29b, on occasion.

Reporters: Employers considered competitors for Federal Reserve employees.

Estimated annual reporting hours: FR 29a, 210 hours; FR 29b, 50 hours.

Estimated average hours per response: FR 29a, 6 hours; FR 29b, 1 hour.

Number of respondents: 45.

General description of report: This information collection is authorized pursuant sections 10(4) and 11(1) of the Federal Reserve Act, (12 U.S.C. section 244 and 248(1)) and is voluntary. These statutory provisions grant the Federal Reserve Board independence to determine its employees' salaries and compensation. Individual respondent data are regarded as confidential under the Freedom of Information Act (FOIA) (5 U.S.C 552(b)(4) and (6)). Any aggregate reports produced are not subject to FOIA exemptions.

Abstract: The Federal Reserve along with other Financial Institutions Reforms, Recovery and Enforcement Act of 1989 (FIRREA) agencies [1] conduct the FR 29a survey jointly. The FR 29b is collected by the Federal Reserve Board. The FR 29a,b collect information on salaries, employee compensation policies, and other employee programs from employers that are considered competitors of the Federal Reserve Board. The data from the surveys primarily are used to determine the appropriate salary structure and salary adjustments for Federal Reserve Board employees so that salary ranges are competitive with other organizations offering similar jobs.

2. *Report title:* Ongoing Intermittent Survey of Households.

Agency form number: FR 3016.

OMB control number: 7100–0150.

Frequency: On Occasion.

Reporters: Households and individuals.

Estimated annual reporting hours: 633 hours.

Estimated average hours per response: Division of Research & Statistics, 1.58 minutes; Division of Consumer & Community Affairs (DCCA), 3 minutes; Other divisions, 5 minutes; and Non-SRC surveys, 90 minutes.

Number of respondents: 500.

General description of report: This information collection is voluntary and is authorized by the Federal Reserve Act (12 U.S.C. § 225a, 263). No issue of confidentiality normally arises because names and any other characteristics that would permit personal identification of respondents are not reported to the Federal Reserve Board. However, exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)) would exempt this information from disclosure.

[1] For purposes of this proposal the FIRREA agencies consist of: the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Commodities Futures Trading Commission, the Farm Credit Administration, and the Securities and Exchange Commission.

Abstract: The Federal Reserve uses this voluntary survey to obtain household-based information specifically tailored to the Federal Reserve's policy, regulatory, and operational responsibilities. Currently, the University of Michigan's Survey Research Center (SRC) includes survey questions on behalf of the Federal Reserve in an addendum to their regular monthly Survey of Consumer Attitudes and Expectations. The SRC conducts the survey by telephone with a sample of 500 households and asks questions of special interest to the Federal Reserve intermittently, as needed. The frequency and content of the questions depend on changing economic, regulatory, and legislative developments. The Federal Reserve primarily uses the survey to study consumer financial decisions, attitudes, and payment behavior.

3. *Report title:* Recordkeeping Requirements Associated with the Real Estate Lending Standards Regulation for State Member Banks.

Agency form number: Reg H–5.

OMB control number: 7100–0261.

Frequency: Aggregate report, quarterly; policy statement, annually.

Reporters: State member banks.

Estimated annual reporting hours: 17,000 hours.

Estimated average hours per response: Aggregate report: 5 hours; Policy statement: 20 hours.

Number of respondents: 850.

General description of report: This information collection is mandatory pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (12 U.S.C. 1828(o)) which authorizes the Federal Reserve to require the recordkeeping requirements associated with the Board's Regulation H (12 CFR 208.51). Since the information is not collected by the Federal Reserve, no issue of confidentiality under the Freedom of Information Act (FOIA) arises. However, information gathered by the Federal Reserve during examinations of state member banks would be deemed exempt from disclosure under exemption 8 of FOIA. 5 U.S.C. 552(b)(8). In addition, exemptions 4 and 6 of FOIA, (5 U.S.C. 552(b)(4) and (b)(6)) also may apply to certain data (specifically, individual loans identified as in excess of supervisory loan-to-value limits) collected in response to these requirements if gathered by the Federal Reserve, depending on the particular circumstances. These additional exemptions relate to confidential commercial and financial information, and personal information, respectively. Applicability of these exemptions would have to be determined on a case-by-case basis.

Abstract: State member banks must adopt and maintain a written real estate lending policy. In addition, banks must identify their loans in excess of the supervisory loan-to-value limits and report (at least quarterly) the aggregate amount of the loans to the bank's board of directors.

Current Actions: On July 24, 2014, the Federal Reserve published a notice in the **Federal Register** (79 FR 43045) requesting public comment for 60 days on the extension, without revision, of the FR 29a, b, FR 3016, and Reg H–5. The comment period for this notice expired on September 22, 2014. The Federal Reserve did not receive any comments.

Board of Governors of the Federal Reserve System, September 26, 2014.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2014–23367 Filed 9–30–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB With Request for Comment

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under Office of Management and Budget (OMB) delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

On July 15, 2014, the Federal Reserve published a notice in the **Federal Register** (79 FR 41276) requesting public comment for 60 days to extend, with revision, the Capital Assessments and Stress Testing information collection. The comment period for this notice expired on September 15, 2014. The Federal Reserve received 8 comment letters. The substantive comments are summarized and addressed below. Comments requesting clarification to item definitions will be addressed in the final instructions.

DATES: Comments are to be submitted on or before October 31, 2014.

ADDRESSES: You may submit comments identified by FR Y–14A/Q/M, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the OMB control number in the subject line of the message.
- *Fax:* 202–452–3819 or 202–452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.), between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Acting Clearance Officer—John Schmidt—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—S Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235,

725 17th Street NW.,Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, with revision of the following report:

Report Title: Capital Assessments and Stress Testing information collection.

Agency Form Number: FR Y–14A/Q/M.

OMB Control Number: 7100–0341.

Effective Dates: September 30, 2014 and December 31, 2014.

Frequency: Annually, semi-annually, quarterly and monthly.

Reporters: Any top-tier U.S. bank holding company (BHC) that has $50 billion or more in total consolidated assets, as determined based on: (i) The average of the BHC's total consolidated assets in the four most recent quarters as reported quarterly on the BHC's Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) (OMB No. 7100–0128); or (ii) the average of the BHC's total consolidated assets in the most recent consecutive quarters as reported quarterly on the BHC's FR Y–9Cs, if the BHC has not filed an FR Y–9C for each of the most recent four quarters. Reporting is required as of the first day of the quarter immediately following the quarter in which it meets this asset threshold, unless otherwise directed by the Federal Reserve.

Estimated Annual Reporting Hours: FR Y–14A: Summary, 67,848 hours; Macro scenario, 2,046 hours; Operational Risk, 456 hours; Regulatory capital transitions, 759; and Regulatory capital instruments, 660 hours. FR Y–14Q: Securities risk, 1,584 hours; Retail risk, 2,112 hours; Pre-provision net revenue (PPNR), 93,852 hours; Wholesale corporate loans, 8,556 hours; Wholesale commercial real estate (CRE) loans, 8,280 hours; Trading risk, 69,336 hours; Regulatory capital transitions, 3,036 hours; Regulatory capital instruments, 5,280 hours; Operational risk, 6,600 hours; Mortgage Servicing Rights (MSR) Valuation, 1,152 hours; Supplemental, 528 hours; and Retail Fair Value Option/Held for Sale (Retail FVO/HFS), 1,408 hours; Counterparty credit risk (CCR), 16,632 hours; and Balances, 2,112 hours; FR Y–14M: Retail 1st lien mortgage, 171,360 hours; Retail home equity, 165,240 hours; and Retail credit card, 110,160 hours. FR Y–14 Implementation, 21,600 hours; and On-Going Automation for existing respondents, 14,400 hours.

Estimated Average Hours Per Response: FR Y–14A: Summary, 1,028 hours; Macro scenario, 31 hours; Operational Risk, 12 hours; Regulatory capital transitions, 23; and Regulatory capital instruments, 20 hours. FR Y–14Q: Securities risk, 12 hours; Retail risk, 16 hours; PPNR, 711 hours; Wholesale corporate loans, 69 hours; Wholesale CRE loans, 69 hours; Trading risk, 1,926 hours; Regulatory capital transitions, 23 hours; Regulatory capital instruments, 40 hours; Operational risk, 34 hours; MSR Valuation, 24 hours; Supplemental, 4 hours; and Retail FVO/HFS, 16 hours; CCR, 441 hours; and Balances, 16 hours; FR Y–14M: Retail 1st lien mortgage, 510 hours; Retail home equity, 510 hours; and Retail credit card, 510 hours. FR Y–14 Implementation, 7,200 hours; and On-Going Automation for existing respondents, 480 hours.

Number of Respondents: 33.

General Description of Report: The FRY–14 series of reports are authorized by section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), which requires the Federal Reserve to ensure that certain bank holding companies (BHCs) and nonbank financial companies supervised by the Federal Reserve are subject to enhanced risk-based and leverage standards in order to mitigate risks to the financial stability of the United States (12 U.S.C. 5365). Additionally, Section 5 of the BHC Act authorizes the Board to issue regulations and conduct information collections with regard to the supervision of BHCs (12 U.S.C. 1844).

As these data are collected as part of the supervisory process, they are subject to confidential treatment under exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)). In addition, commercial and financial information contained in these information collections may be exempt from disclosure under exemption 4 of FOIA (5 U.S.C. 552(b)(4)). Such exemptions would be made on a case-by-case basis.

Abstract: The data collected through the FR Y–14A/Q/M schedules provide the Federal Reserve with the additional information and perspective needed to help ensure that large BHCs have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The annual Comprehensive Capital Analysis and Review (CCAR) exercise is also complemented by other Federal Reserve supervisory efforts aimed at enhancing the continued viability of large BHCs, including continuous monitoring of BHCs' planning and management of liquidity and funding resources and regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of these financial institutions. In order to fully evaluate the data submissions, the Federal Reserve may conduct follow up discussions with or request responses to follow up questions from respondents, as needed.

The semi-annual FR Y–14A collects large BHCs' quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.[1] The quarterly FR Y–14Q collects granular data on BHCs' various asset classes and PPNR for the reporting period. The monthly FR Y–14M comprises three loan- and portfolio-level collections, and one detailed address matching collection to supplement two of the portfolio and loan-level collections. Both the FR Y–14Q and the FR Y–14M are used to support supervisory stress test models and for continuous monitoring efforts.

Current Actions: On July 15, 2014 the Federal Reserve published a notice in the **Federal Register** (79 FR 41276) requesting public comment for 60 days on the extension, with revision, of the FR Y–14. The Federal Reserve proposed to revise several schedules of the FR Y–14A/Q/M reports effective September 30, 2014 and December 31, 2014, and to expand the reporting panel to include BHCs that currently rely on Supervision and Regulation Letter SR 01–01. The comment period for this notice expired on September 15, 2014. All substantive comments are summarized and addressed below.

Summary of Comments

The Federal Reserve received eight comment letters addressing the proposed changes to this information collection, including one from a BHC, one from an individual, and six from trade associations. Many of the comments received requested clarification of the instructions for the information to be reported, or were technical in nature. These comments will be addressed in the final FR Y–14A/Q/M reporting forms and instructions. Other comments requested clarification, but did not include sufficient information. The Federal Reserve will discuss these with the

[1] BHCs that must re-submit their capital plan generally also must provide a revised FR Y–14A in connection with their resubmission.

appropriate commenters to determine the clarifications that should be made.

The Federal Reserve also received several comments not directly related to the proposed revisions to the FR Y–14 information collection regarding (1) communications between respondents and the Federal Reserve, (2) the Frequently Asked Questions process, (3) technical instructions and data submission processes, and (4) edit checks. The Federal Reserve appreciates the suggestions provided through these comment letters as well as feedback provided in meetings with both individual respondents and industry groups and uses these suggestions in its effort to continually improve its internal processes and practices. The following is a detailed discussion of aspects of the proposed FR Y–14 collection for which the Federal Reserve received substantive comments and an evaluation of, and responses to the comments received.

General Comments

In general, commenters expressed concerns about the timing of implementing new items, the overall expansion of the information collection, alignment with the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) (OMB No. 7100–0128), the expansion of the reporting panel, and the details of proposed items on the Operational Risk and Counterparty Schedules of the FR Y–14Q. Specifically, several commenters stated that given the scale and granularity of certain proposed changes, the associated effective date of September 30, 2014, does not provide a sufficient amount of time to build or update data infrastructure or, most importantly, to ensure compliance with internal process controls and governance. One of these commenters suggested that all changes associated with this proposal be effective December 31, 2014, while the other commenters suggested that the Federal Reserve adopt a policy of providing a six month minimum between the proposal's finalization and the effective date for the FR Y–14A/Q/M reporting forms. The Federal Reserve recognizes the challenges associated with implementing changes in a timely manner, especially when the changes are finalized close to the effective date, and is considering longer-term options to improve such timing in the future. For the current proposal, the Federal Reserve weighed the benefits for each of the proposed changes with a September 30, 2014, effective date against the estimated burden to the industry. As a result, the Federal Reserve is delaying the effective date for certain changes until December 31, 2014, as detailed in the schedule-specific sections below.

Commenters provided views on proposed changes relating to the collection of regulatory capital components under the revised capital framework. As discussed in the FR Y–14A/Q/M proposal, these changes were intended to better align the regulatory capital components that appear on the FR Y–9C proposal.[2] Following the IFR, the Federal Reserve sought comment on changes to the FR Y–9C, which included two additional line items that were not included in the proposed FR Y–14 collection. One commenter suggested that the Federal Reserve align the FR Y–14A/Q schedule with schedule HC–R, while another requested that the aligning changes not be made to the FR Y–14A/Q until the FR Y–9C proposal is finalized and that in the future changes should be proposed to both report forms concurrently. The Federal Reserve is adjusting the FR Y–14A/Q/M schedules according to the current FR Y–9C proposal. These adjustments are necessary to align the subcomponents of standardized risk-weighted assets with total standardized risk-weighted assets, and will likely alleviate confusion about where regulatory capital components should be reported. The Federal Reserve agrees that concurrent timing of proposals for the two reporting forms would be ideal and will explore options to improve the timing for future proposals. The Federal Reserve notes, however, that the timing of changes to the FR Y–9C often are tied to the changes to the Consolidated Reports of Condition and Income (FFIEC 031, FFIEC 041) (OMB No. 7100–0036).

In regard to the expansion of the reporting panel to include BHCs relying on Supervision and Regulation Letter SR 01–01 (''SR 01–01 BHCs''),[3] commenters stated that an effective date of September 30, 2014, does not provide SR 01–01 BHCs sufficient time to build and implement the significant data reporting infrastructure necessary for the FR Y–14A/Q/M report forms, especially given that initial notification was given in the July 15, 2014, **Federal Register** publication. They also recommended that the addition of SR 01–01 BHCs to the FR Y–14A/Q/M reporting panel be delayed until these BHCs are subject to the capital plan and stress test rules,[4] because the report forms would effectively require early compliance with certain provisions of the capital plan and stress test rules. In response to commenters' concerns, the Federal Reserve will delay the inclusion of SR 01–01 BHCs in the FR Y–14A/Q/M reporting panel until December 31, 2014. As a result of this change, SR 01–01 BHCs have an additional three months to develop the data reporting infrastructure. In addition, SR 01–01 BHCs are not required to submit the FR Y–14A, including the Summary and Scenario schedules, for the September 30, 2014, as of date, which should address concerns that the report forms would effectively require early compliance with the capital plan and stress test rules. The Federal Reserve understands and appreciates the effort required to establish the systems and processes for effective reporting as well as the associated issues and complexities, having worked through these issues with and managed data submissions of numerous BHCs over the last few years. Including SR 01–01 BHCs in the reporting panel will help ensure a high standard of timeliness and accuracy of data that are used for the Comprehensive Capital Analysis and Review (CCAR) and Dodd-Frank Act Stress Test (DFAST) exercises when SR 01–01 BHCs become subject to the capital plan and stress test rules.

Numerous commenters objected to the proposed data items on the FR Y–14Q Operational Risk schedule regarding legal reserves for closed/settled litigation with settlements above $250 thousand. Commenters expressed the view that this information could violate attorney-client privilege and that such information may be inadvertently shared with competitors or intentionally shared with other government organizations with whom the reporting firm may be involved in litigation, giving the other party insight into their reserving practices. The Federal Reserve takes the confidentiality of respondent data very seriously and is cognizant of respondents' views of confidentiality regarding their legal reserving practices. In order to provide sufficient time to facilitate feedback and carefully consider methods that would enable the Federal Reserve to collect legal reserves data in a fashion that would protect the confidentiality of the information, the Federal Reserve will remove the proposed collection of legal reserve information and seek notice and comment on a proposal on this subject in the future.

[2] The proposal indicated that ''the Federal Reserve may modify the proposed revisions to the FR Y–14 report prior to finalization of this proposal as appropriate and consistent to align with any additional changes being considered to the FR Y–9C report.''

[3] Application of the Board's Capital Adequacy Guidelines to Bank Holding Companies Owned by Foreign Banking Organizations.

[4] *See* 12 CFR 225.8(c)(2)(i), 12 CFR 252.43(b)(2), and 12 CFR 122.53(b)(2).

Finally, commenters expressed concern over the level of detail in the proposed changes to the Counterparty schedule, particularly the portions that subset by both agreement and asset category. The Federal Reserve views collecting more detailed counterparty data critical to assessing the reasonableness of the BHC's model-based estimates used as key inputs to supervisory stress test as well as ensuring the comparability of results across BHCs. However, the Federal Reserve also recognizes the potential operational difficulty in providing granular counterparty information by asset category for each netting agreement. Therefore, the Federal Reserve will provide an additional 30-day public comment period in the final **Federal Register** notice for the agreement-level/asset category counterparty information. This extended comment period will facilitate feedback on ways to collect counterparty data to meet the needs of the Federal Reserve while incurring the least amount of burden to the industry. See the Supplementary Information section below for additional information.

FR Y–14A

The majority of comments received regarding the FR Y–14A requested clarification of item definitions and will be addressed in the final instructions. However, as noted in the initial **Federal Register** notice, the Federal Reserve stated that many of the items related to capital and risk-weighted assets would be modified to align with schedule HC–R of the FR Y–9C. Accordingly, several of these items will be modified, added and removed to be consistent with the most recent FR Y–9C proposal.

Schedule A—Summary

A.1.c.2—Standardized RWA. In order to align with the proposed schedule HC–R of the FR Y–9C, the Federal Reserve will add the following two line items: All other on-balance sheet securitization exposures; and Off-balance sheet securitization exposures.

Schedule D—Regulatory Capital Transitions

In order to align with the proposed schedule HC–R of the FR Y–9C, the Federal Reserve will add the following two line items: All other on-balance sheet securitization exposures; and Off-balance sheet securitization exposures. Additionally, commenters requested that the Federal Reserve revise the proposed instructions regarding the calculation of the supplementary leverage ratio (SLR). The proposed instructions were based on the proposal issued by Board, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency on the SLR. The agencies finalized these revisions in September, 2014.[5] As compared to the proposal, the final rule requires that off-balance sheet items be calculated on a monthly, rather than a daily, basis. The Federal Reserve will make these changes, as they will reduce burden on institutions and will align the reporting of the SLR with the final SLR rule.

FR Y–14Q

The majority of comments received regarding the FR Y–14Q requested clarification of item definitions, and the Federal Reserve will address these comments in the final instructions. Some comments, however, resulted in modification to data items and are addressed below.

Schedule A—Retail (A.1 to A.10)

One commenter requested that the Federal Reserve clarify whether or not historical data must be submitted for items related to charge-offs and recoveries whose definitions were proposed to be redefined to be consistent with the FR Y–9C. The Federal Reserve notes that historical data are not required to be submitted for such items at this time.

Schedule A.2—U.S. Auto

One commenter expressed concern about being able to provide the loan-to-value (LTV) segmentation variable based on the wholesale instead of retail value of the vehicle for the September 30, 2014, as of period, because they stated this proposed modification would require a major change to current industry practices. The Federal Reserve notes that a formal survey of respondents was conducted in 2013 regarding this issue and determined that almost all respondents at that time were internally computing LTV based on the wholesale value of the vehicle. Therefore, the Federal Reserve will finalize the modification as proposed, however, respondents are encouraged to discuss any data issues with their Federal Reserve Bank Statistics contacts.

Schedule B—Securities

One commenter identified a possible duplicative request for information between items 3 and 14 on the proposed schedule B.3 related to the effective portion of hedges included in amortized cost basis. The Federal Reserve agrees that the request could be seen as duplicative and will modify item 14 accordingly. Another commenter stated that proposed items 14 and 15 of the same schedule are irrelevant and difficult to provide given that they request information regarding gains and losses of hedging instruments since inception of the hedging positions. The Federal Reserve will modify both items to include information regarding gains and losses during the reporting quarter. Finally, a commenter recommended that the Federal Reserve add a field that collects estimates of bond ratings for instruments with no CUSIP number based on issuer-specific information, similar to what was collected from certain firms during CCAR 2014. The Federal Reserve will consider adding such information to a future proposal.

Schedule D—Regulatory Capital Transitions

Similar to the FR Y–14A Regulatory Capital Transitions schedule, two line items will be added in order to align with the proposed schedule HC–R of the FR Y–9C: All other on-balance sheet securitization exposures; and Off-balance sheet securitization exposures. Additionally, line item definitions will be revised in accordance with the Supplementary Leverage Ratio final rule, as described above.

Schedule F—Trading

The Federal Reserve will revise the instruction that provides that BHCs may report these data as-of the most recent date that corresponds to their weekly internal risk reporting cycle as long as it falls before the as-of-date. Specifically, to provide additional flexibility, these instructions will be modified to state that the Federal Reserve may provide for a different weekly period over which data may be reported. For instance, the Federal Reserve may exercise this authority where the weekly period would include a quarter-end, a holiday, or a financial emergency that could distort the reported results.

Schedule H—Wholesale

A commenter noted that providing only ''Yes'' and ''No'' options for the Prepayment Penalty Flag item might not be sufficient, because the terms of prepayment penalties can vary significantly between firms and may include provisions that substitute for prepayment penalties. Another commenter requested clarification on whether this item should include loans which at any point included a prepayment penalty. The Federal

[5] ''Regulatory Capital Rules: Regulatory Capital, Revisions to the Supplementary Leverage Ratio'' (September 3, 2014), available at: *http://www.federalreserve.gov/newsevents/press/bcreg/20140903b.htm.* 12 CFR 217. 10(c)(4).

Reserve agrees that other forms of prepayment penalties should be captured and will expand the options to the Prepayment Penalty Flag item to include an option to identify loans that at some point had some form of prepayment penalty. The same commenter also recommended adding an option to the Guarantor Flag item to capture instances of partial government guarantee. The Federal Reserve notes that option two of that item captures instances of partial government guarantee. Additionally, in response to comments about the timing of the changes, the Federal Reserve will move the effective date from September 30, 2014, to December 31, 2014, for the following changes: *Schedule H.1—Corporate Loan* (1) adding an item that captures the credit facility currency, and (2) adding an item to collect the industry code for the entity that is the primary source of the repayment for the credit facility; *Schedule H.2—Commercial Real Estate* (1) modifying item 20 (Amortization) to capture non-standard amortization schedule by allowing banks to report '-1', (2) adding an option to current item 21 (Recourse) that indicates partial recourse and modifying option 1 to indicate full recourse, (3) modifying current item 25 (Loan Purpose) to include an option for Mini-perm, (4) modify current item 39 (Property Size) to only capture credit facilities secured by one property of one type, (5) adding an item to collect the date on which current occupancy was determined, (6) adding an item that collects the current value basis, and (7) adding an item that captures the credit facility currency.

Schedule K—Supplemental

A commenter noted that the information currently collected in columns F (Auto Leases) and G (Non-Auto Leases) is included in the proposed FR Y–14Q Balances Schedule and recommended removing those columns and moving the remaining information from Schedule K to the proposed FR Y–14Q Balances Schedule. The Federal Reserve agrees that the information in columns F and G of Schedule K is contained in the FR Y–14Q Balances Schedule and will remove those columns. However, the Federal Reserve believes moving the remaining information from Schedule K to the FR Y–14Q Balances Schedule would unnecessarily change the format of the information collection and not give institutions ample time to program their systems for these changes. Therefore, the Federal Reserve will keep the remaining information on Schedule K.

Schedule L—Counterparty

Several commenters expressed concern about the level of granularity, increase in frequency, and timing of the proposed addition of the Derivative Profile by Counterparty and Aggregate sub-schedule and expansion of the Securities Financing Transactions (SFT) Profile by Counterparty and Aggregate sub-schedule. More detailed counterparty data would allow the Federal Reserve to assess the reasonableness of the BHC's model-based estimates used as key input to supervisory stress tests, and ensure the comparability of results across BHCs. However, in order to reduce reporting burden while the comment period is extended, the Federal Reserve will change the legal-entity, netting-agreement level of reporting on tables L.5.2 and L.6.2 to a consolidated counterparty level. Additionally, the Federal Reserve will remove the sub-asset categories on table L.5.2 at this time. The Federal Reserve will consider any additional comments received during the extended public comment period and incorporate changes, as appropriate, before finalizing these data items.

FR Y–14M

The majority of comments received regarding the FR Y–14M requested clarification of item definitions, and the Federal Reserve will address these comments in the final instructions. One comment, however, results in a modification to the proposed items and is addressed below.

Schedule A—Domestic First Lien Closed-end 1–4 Family Residential Loan

One commenter noted that reporting information regarding first lien home equity loans would require significant time and effort because such a category of loans does not exist on the FR Y–9C, and that no industry standard exists for first lien home equity loans. In response the Federal Reserve will remove the item Home Equity Loan Flag.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

Abstract: As mentioned above, the Federal Reserve will provide an additional 30-day public comment period for the collection of counterparty agreement-level/asset-category data, to request further information on the data items listed below. If the Federal Reserve receives no relevant comments, the revisions will be finalized, effective December 31, 2014, as originally proposed. If institutions are concerned about providing this information in a public comment letter, the Federal Reserve recommends they submit this information anonymously.

Counterparty

1. Is there difficulty in providing information in Tables L.5.1 and L.6.1 and if so what is/are the difficult(ies)?
2. Is there difficulty in providing counterparty transaction information at a netting set level, as in Tables L.5.2 and L.6.2? If so, what are the difficulties with regard to internal systems or the netting agreements themselves?
3. Is there difficulty in providing counterparty transaction information segmented by asset categories in general? If so, what are the difficulties with regard to internal systems or the asset categories/sub-categories proposed?
4. Do respondents have counterparty transactions, either derivatives or securities financing transactions (SFTs), which are not part of a master agreement? If so please provide details about the internal management of these transactions, especially with regard to collateral.

All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Board of Governors of the Federal Reserve System, September 26, 2014.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2014–23346 Filed 9–30–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 2014–22822) published on pages 57553 and 57554 of the issue for Thursday, September 25, 2014.

Under the Federal Reserve Bank of Kansas City heading, the entry for Robert Craig Duncan and Diana H. Duncan Revocable Trust, R. Craig Duncan and Diana H. Duncan as trustees, all of Winfield, Kansas; Robert E. Duncan Revocable Trust, R. Craig Duncan, as trustee, both of Winfield, Kansas; Jane Gary Duncan Revocable Trust, Jane Gary Duncan, as Trustee,

both of Winfield, Kansas; George Duncan and Adrianna Duncan, both of Santa Fe, New Mexico; Spencer Duncan and Tessa Duncan, both of Wichita, Kansas; and Taylor Duncan and Tara Duncan, both of Winfield, Kansas, all as members of the R. Craig Duncan Family Group, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Robert Craig Duncan and Diana H. Duncan Revocable Trust, R. Craig Duncan and Diana H. Duncan as trustees, all of Winfield, Kansas; Robert E. Duncan Revocable Trust, R. Craig Duncan, as trustee, both of Winfield, Kansas; the Dana James Revocable Trust, Dana James Duncan, as trustee, both of Dallas, Texas; Jane Gary Duncan Revocable Trust, Jane Gary Duncan, as Trustee, both of Winfield, Kansas; George Duncan and Adrianna Duncan, both of Santa Fe, New Mexico; Spencer Duncan and Tessa Duncan, both of Wichita, Kansas; and Taylor Duncan and Tara Duncan, both of Winfield, Kansas, all as members of the R. Craig Duncan Family Group;* to retain voting shares of Cornerstone Alliance, Ltd, and thereby indirectly retain voting shares of CornerBank, both in Winfield, Kansas.

Comments on this application must be received by October 10, 2014.

Board of Governors of the Federal Reserve System, September 26, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–23325 Filed 9–30–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Savings and Loan Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and the Board's Regulation LL (12 CFR Part 238) to acquire shares of a savings and loan holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 16, 2014.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *EREF–MP Alpha, LLC; East Rock Endowment Fund, L.P.; East Rock Capital, LLC; East Rock Capital GP, LLC; D Partners Management, LLC; Shapiro Partners Management, LLC; Graham Duncan and Adam Shapiro, all of New York, New York; and MP Alpha Holdings LLLP,* Miami, Florida; to retain voting shares of Bay Bancorp, Inc., Columbia, Maryland, and thereby indirectly retain voting shares of Bay Bank, FSB, Lutherville, Timonium, Maryland.

Board of Governors of the Federal Reserve System, September 26, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–23326 Filed 9–30–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 27, 2014.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Talmer Bancorp, Inc.,* Troy, Michigan; to merge with First Huron Corporation, and thereby indirectly acquire Signature Bank, both in Bad Axe, Michigan.

Board of Governors of the Federal Reserve System, September 26, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–23327 Filed 9–30–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990—New–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for extending the use of the approved information collection assigned OMB control number 0990–0322, which expires on December 30, 2014. Prior to submitting that ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before December 1, 2014.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–0990–0322–60D for reference.

Information Collection Request Title: Safe Harbor for Federally Qualified Health Centers Arrangements.

Abstract: The Office of General Inspector an approval by OMB on an extension for data collection 0990–0322

which are requirements associated with a voluntary safe harbor for Federally Qualified Health Centers under the Federal anti-kickback statute. *See* 72 FR 56632 (October 4, 2007). The safe harbor protects certain arrangements involving goods, items, services, donations, and loans provided by individuals and entities to certain health centers funded under section 330 of the Public Health Service Act.

Likely Respondents: Health Centers.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Type of respondent	Number of respondents	Number responses per respondent	Average burden hour per response	Total burden hours
Health Center (administrative professional)	4,983	1	1	4,983

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Darius Taylor,

Information Collection Clearance Officer.

[FR Doc. 2014–23322 Filed 9–30–14; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–14–14QJ]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of Hospital Preparedness in a Mass Casualty Event—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Hospital preparedness for responding to public health emergencies including mass casualty incidents and epidemics have become a major national challenge. Following the World Trade Center attack of September 11, Hurricane Katrina of 2005, and the 2011 Alabama tornadoes, there is continued and heightened interest of using surveys to assess hospital readiness for various disasters and mass casualty incidents. Current patterns in terrorist activity increase the potential for civilian casualties from explosions. Explosions, particularly in confined spaces, can inflict severe multisystem injuries on numerous patients and produce unique challenges to health care providers and the systems that support them. The U.S. healthcare system and its civilian healthcare providers have minimal experience in treating patients with explosion-related injuries and deficiencies in response capability could result in increased morbidity and mortality and increased stress and fear in the community. Additionally, the surge of patients after an explosion typically occurs within minutes of the event and can quickly overwhelm nearby hospital resources. This potential for many casualties and an immediate surge of patients may stress and limit the ability of emergency management service systems, hospitals, and other health care facilities to care for critically injured victims. As a result, there remains a gap in our preparedness efforts.

CDC is requesting OMB approval for one year for this project. This project will address this gap in readiness and preparedness.

The purpose of this project will be to (1) develop minimum standards into the assessment tool to enable a review or an evaluation of hospital readiness and (2) develop strategies for dissemination and implementation of the interview tool.

A pilot of the questionnaire, sent to four respondents, has been completed and necessary adjustments to the overall questionnaire have been made during March of 2014.

A national sample of 400 randomly selected hospitals will be selected for participation. The Chief Executive Officers (CEOs) from sampled hospitals will be mailed an introductory letter, contacted by telephone a few days later and asked if the hospital's emergency preparedness coordinator/manager can complete the survey. The emergency preparedness coordinator/manager will complete the main survey online using the survey Web site with a goal of 320 completed surveys. CDC estimates the total time required to complete the survey as 2 hours, including reading the instructions. The survey covers hospital preparedness efforts across departments, number of staff, participation in training and exercises, agreements with other responders, and hospital characteristics.

After data are gathered from the survey, responses will be compiled, analyzed and summarized. The results will be used to develop an

implementation manual, training materials and dissemination plan for dissemination. A final study report will also be created.

There are no costs to the respondents other than their time. The total estimated annual burden hours are 740.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)
CEO	Screen	400	1	15/60
Emergency Preparedness Coordinator/Manager	Survey	320	1	2

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–23318 Filed 9–30–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–14–14VK]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Improving the Understanding of Traumatic Brain Injury through Policy and Program Evaluation Research—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Traumatic brain injury (TBI) is one of the highest priorities in public health because of its magnitude, economic and human impact, and preventability. Improving the recognition and management of mild TBIs—such as concussions that occur during youth sports—can help reduce the harm caused by such injuries and prevent future consequences.

More than 7 million U.S. high school students participate in organized sports each year. Sports-related concussions are common injuries among youth and have potentially serious consequences. CDC's public health efforts have included the development of the Heads Up education campaign, which focuses on raising awareness of the signs and symptoms of concussions and improving the management of concussions among youth athletes.

Individual states and the District of Columbia have taken the initiative and passed laws aimed at improving the management of youth sports-related concussions. In 2009, Washington State enacted the first such law to manage youth sports-related concussions—the Lystedt Law. Since there is currently no model law for managing youth sports-related concussions, 49 other states and the District of Columbia developed their own laws independently. While there are similarities across the states, an examination of the laws shows considerable variation in the breadth and scope of the laws. Despite the proliferation of state laws and the dissemination of concussion education materials, little is known about the reach, use, and effectiveness of these laws in improving the management of youth sports-related concussions. The major danger faced by young athletes who have experienced a concussive event is that they are allowed to return to play while still experiencing symptoms. If the state laws are effective, they should reduce the number of athletes who return to play while symptomatic.

The primary goal of the current proposal is to examine the relationship between state laws aimed at managing youth sports-related TBIs and youth athletes returning to play while symptomatic. In addition, the study also intends to assess variations in knowledge, attitudes, and behavior regarding concussions; the use of concussion education materials, including Heads Up; and state policies governing requirements for identification and management of concussions in youth athletics. With the data collected during the proposed study, CDC will be able to assess the effectiveness of state laws in reducing the number of youth athletes who return to play with concussion symptoms, the general knowledge and understanding of concussions, and the effectiveness of education and training about concussions. This will enable CDC to make recommendations for improving state policies and improve the agency's Heads Up concussion education training program.

CDC requests OMB approval to collect data from three national subsamples: (1) Soccer coaches, coaching boys and girls ages 14–18 on club soccer teams; (2)

boys and girls youth soccer players ages 14–18 playing club soccer; and (3) parents of boys and girls ages 14–18 who are club soccer players. The samples will be drawn from U.S. Youth Soccer, a national youth soccer organization with over 3 million youth players.

CDC will use an online data collection tool for a pre-season survey, followed by a brief weekly surveillance survey administered through an automated phone system once a week for ten weeks. Respondents will receive a randomly generated identification number that will be used to complete the online and phone surveys. The database linking these identification numbers to participant data will only be available to a limited number of evaluation contractor staff.

The pre-season survey will be administered to the coaches, players, and parents, while the weekly surveillance reports will only be completed by players and parents. Athletes who report suffering a hit with associated concussive symptoms and the parent of such an athlete will also be administered a phone interview about the athlete's symptoms and management.

There are no costs to respondents other than their time. The total estimated annual burden hours are 2,452.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (hours)
U.S. Youth Soccer Coach	Pre-season survey	180	1	10/60
Parent	Pre-season survey	2,025	1	10/60
Parent	Weekly Surveillance survey	1,518	10	3/60
Parent	Injury Follow-up survey	683	1	10/60
Athlete	Pre-season survey	2,025	1	10/60
Athlete	Weekly Surveillance survey	1,518	10	3/60
Athlete	Injury Follow-up survey	683	1	10/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–23369 Filed 9–30–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

HIV/AIDS Surveillance and Service Data Analysis in the Republic of Haiti Under the President's Emergency Plan for AIDS Relief (PEPFAR)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: General notice; notice of expansion supplement award.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) announces intent to award additional expansion supplement funds to Centre pour le Development et la Sante (CDS) Cooperative Agreement Number PS001802 in the amount of $1,420,000.

FOR FURTHER INFORMATION CONTACT: Project Officer: Christen Suhr, Centers for Disease Control, Center for Global Health, Division of Global Health Protection, 3400 Port-au-Prince Place, Washington, DC 20521–3400 Email: *DZE0@cdc.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this award is to build on the existing USAID-supported maternal and child health programs in Haiti, as well as on PEPFAR- and Global Fund-supported HIV services implemented in a network of five (5) facilities to: (1) Expand and strengthen integrated counseling and testing (CT), prevention of mother to child transmission (PMTCT), palliative care, TB/HIV, and laboratory services in all of these facilities, and (2) Expand and strengthen HIV services in the TB directly observed therapy, short-course (DOTS) clinics located in the North East Department currently supported by USAID and the Global Fund.

The funds solicited will ensure continuation of ongoing projects and clinical activities to support health systems growth and transiting to government ownership and oversight in Haiti including: HIV Voluntary Testing & Counseling, Primary Prevention of HIV/AIDS and Co-Infections, Prevention of Mother-to-Child Transmission (PMTCT), Pediatric Case Finding and Treatment Services, and Integrated HIV/TB Care & Treatment.

Initial award date 9/30/2009–9/29/2014; additional funds and time needed to carryout award 9/30/2014–9/30/2015. Project Number is CDC–RFA–PS09–917.

Dated: September 25, 2014.

Ron A. Otten,

Acting Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2014–23351 Filed 9–30–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

HIV/AIDS Surveillance and Service Data Analysis in the Republic of Haiti Under the President's Emergency Plan for AIDS Relief (PEPFAR)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: General notice; notice of expansion supplement award.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) announces intent to award additional expansion supplement funds to National Alliance of State & Territorial AIDS Directors (NASTAD) Cooperative Agreement Number PS001842 in the amount of $1,250,000.

FOR FURTHER INFORMATION CONTACT: Project Officer: Christen Suhr, Centers for Disease Control, Center for Global Health, Division of Global Health Protection, 3400 Port-au-Prince Place,

Washington, DC 20521–3400, Email: *DZE0@cdc.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this award is to carry out periodic Antenatal Clinic (ANC) sero-surveys in order to follow the trend of both the HIV/AIDS and syphilis epidemics among pregnant women attending these clinics in the Republic of Haiti; Perform HIV drug resistance threshold study to evaluate the extent of transmitted HIV drug resistance in sero-sentinel surveillance sites; Perform periodic triangulation of data in order to demonstrate program impact, identify areas for improvement, direct new programs and enhance existing programs as well as help direct policy changes; Perform cohort studies to capture data on key aspects of patient care and treatment in a selected number of ART sites of the PEPFAR network at baseline, 6 months, and then yearly in order to assess the performance of the ART sites regarding delivery of treatment; To assist with data analysis of PEPFAR approved studies, including monitoring and evaluation activities, on-going program assessment and public health evaluations (PHE).

During FY15, the purpose of the award is to work directly with The Haiti Ministry of Health (MSPP) to strengthen their capacity to effectively prevent HIV infections; improve care and treatment of HIV/AIDS and co-infection; build the capacity for the local and regional collection of strategic information and its use for program management and development; and, increase the government of Haiti's capacity to lead and manage a sustainable response to the HIV epidemic.

Initial award date 9/30/2009–9/29/2014; additional funds and time needed to carryout award 9/30/2014–9/30/2015. Project Number is CDC–RFA–PS09–981.

Dated: September 25, 2014.

Ron A. Otten,

Acting Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2014–23350 Filed 9–30–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Community-Based Family Resource and Support Grants (Name changed to Child Abuse Prevention Program—OIS notified 6/2007).

OMB No.: 0970–0155.

Description: The Program Instruction, prepared in response to the enactment of the Community-Based Grants for the Prevention of Child Abuse and Neglect (administratively known as the Community Based Child Abuse Prevention Program, (CBCAP), as set forth in Title II of Public Law 111–320, Child Abuse Prevention and Treatment Act Amendments of 2010, provides direction to the States and Territories to accomplish the purposes of (1) to support community-based efforts to develop, operate, expand, enhance, and coordinate initiatives, programs, and activities to prevent child abuse and neglect and to support the coordination of resources and activities to better strengthen and support families to reduce the likelihood of child abuse and neglect; and (2) to foster understanding, appreciation and knowledge of diverse populations in order to effectively prevent and treat child abuse and neglect. This Program Instruction contains information collection requirements that are found in (Pub. L. 111–320) at sections 201; 202; 203; 205; 206; and pursuant to receiving a grant award. The information submitted will be used by the agency to ensure compliance with the statute, complete the calculation of the grant award entitlement, and provide training and technical assistance to the grantee.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	52	1	40	2,080
Annual Report	52	1	24	1,248

Estimated Total Annual Burden Hours: 3,328.

Additional Information

Copies of the proposed collection may be obtained 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. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–23293 Filed 9–30–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State Plan for Grants to States for Refugee Resettlement.

OMB No.: 0970–0351.

Description: A State Plan is required by 8 U.S.C. 1522 of the Immigration and Nationality Act (the Act) [Title IV, Sec. 412 of the Act] for each State agency requesting Federal funding for refugee resettlement under 8 U.S.C. 524 [Title IV, Sec. 414 of the Act], including Refugee Cash and Medical Assistance, Unaccompanied Minor Refugee Program, Refugee Social Services, Cuban/Haitian Entrant Program and Targeted Assistance program funding.

The State Plan is a comprehensive narrative description of the nature and scope of a States programs and provides assurances that the programs will be administered in conformity with the specific requirements stipulated in 45 CFR 400.4–400.9. The State Plan must include all applicable State procedures, designations, and certifications for each requirement as well as supporting documentation. The plan assures ORR that the State is capable of administering refugee assistance and coordinating employment and other social services for eligible caseloads in conformity with specific requirements. Implementation of the Affordable Care Act has significant impacts on States' administration of Refugee Medical Assistance and requires information to ensure accountability and compliance with regulations. Also, Revised Medical Screening Guidelines for Newly Arriving Refugees policy (State Letter #12–09) requires assurances that medical screening is conducted in compliance with regulations and policies. The increasing complexity of the Unaccompanied Refugee Minor program, impacted by changes in federal child welfare legislation as well as state child welfare statutes, regulations and IV–B and IV–E plans, necessitates information and assurances for review of State Plans for URM programs against requirements and mandatory standards under 45 CFR Part 400, subpart H and associated State Letters and ORR guidance. Information and assurances address administrative structure and state oversight, legal responsibility, eligibility, services and case review/planning, and interstate movement.

States must use a pre-print format for required components of State Plans for ORR- funded refugee resettlement services and benefits prepared by the Office of Refugee Resettlement (ORR) of the Administration for Children and Families (ACF).

States must submit by August 15 each year new or amended State Plan for the next Federal fiscal year. For previously approved plan, States must certify no later than October 31 each year that the approved State plan is current and continues in effect.

Respondents: State Agencies, Replacement Designees under 45 CFR 400.301(c), and Wilson-Fish Grantees (State 2 Agencies) administering or supervising the administration of programs under Title IV of the Act.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Title IV State Plan	50	1	15	750

Estimated Total Annual Burden Hours: 750.

Additional Information

Copies of the proposed collection can be obtained 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.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–23288 Filed 9–30–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Tribal Consultation Meeting

AGENCY: Office of Head Start (OHS), Administration for Children and Families, HHS.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Improving Head Start for School Readiness Act of 2007, Public Law 110–134, notice is hereby given of one 1-day Tribal Consultation Session to be held between the Department of Health and Human Services, Administration for Children and Families, Office of Head Start leadership and the leadership of Tribal Governments operating Head Start (including Early Head Start) programs. The purpose of this Consultation Session is to discuss ways to better meet the needs of American Indian and Alaska Native children and their families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations [42 U.S.C. 9835, Section 640(l)(4)].

DATES: October 22, 2014, from 1:00 p.m. to 5:00 p.m.

Location: Aleutian Pribilof Islands Association, 1131 East International Airport Road, Anchorage, Alaska 99518.

FOR FURTHER INFORMATION CONTACT: Robert Bialas, Regional Program Manager, Region XI, Office of Head Start, email *Robert.Bialas@acf.hhs.gov* or phone (202) 205–9497. Additional information and online meeting registration is available at *http://eclkc.ohs.acf.hhs.gov/hslc/hs/calendar/tc2014.*

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) announces Office of Head Start (OHS) Tribal Consultations for leaders of Tribal Governments operating Head Start and Early Head Start programs.

The agenda for the scheduled OHS Tribal Consultation in Anchorage, Alaska, will be organized around the statutory purposes of Head Start Tribal Consultations related to meeting the needs of American Indian/Alaska Native children and families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations. In addition, OHS will share actions taken and in progress to address the issues and concerns raised in 2013 OHS Tribal Consultations.

The Consultation Session will be conducted with elected or appointed leaders of Tribal Governments and their

designated representatives [42 U.S.C. 9835, Section 640(l)(4)(A)]. Designees must have a letter from the Tribal Government authorizing them to represent the tribe. The letter should be submitted at least 3 days in advance of the Consultation Session to Robert Bialas at *Robert.Bialas@acf.hhs.gov.* Other representatives of tribal organizations and Native nonprofit organizations are welcome to attend as observers.

A detailed report of the Consultation Session will be prepared and made available within 45 days of the Consultation Session to all Tribal Governments receiving funds for Head Start and Early Head Start programs. Tribes wishing to submit written testimony for the report should send testimony to Robert Bialas at *Robert.Bialas@acf.hhs.gov* either prior to the Consultation Session or within 30 days after the meeting.

Oral testimony and comments from the Consultation Session will be summarized in each report without attribution, along with topics of concern and recommendations. OHS has sent hotel and logistical information for the Alaska Consultation Session to tribal leaders via email and posted information on the Early Childhood Learning and Knowledge Center Web site at *http://eclkc.ohs.acf.hhs.gov/hslc/hs/calendar/tc2014.*

Dated: September 24, 2014.

Ann Linehan,

Acting Director, Office of Head Start.

[FR Doc. 2014–23342 Filed 9–30–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0007]

Fee for Using a Rare Pediatric Disease Priority Review Voucher in Fiscal Year 2015

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the fee rate for using a rare pediatric disease priority review voucher for fiscal year (FY) 2015. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), authorizes FDA to determine and collect rare pediatric disease priority review user fees for certain applications for review of human drug or biological products when those applications use a rare pediatric disease priority review voucher. These vouchers are awarded to the sponsors of certain rare pediatric disease product applications, submitted 90 days or more after July 9, 2012, upon FDA approval of such applications. The amount of the fee for using a rare pediatric disease priority review voucher is determined each FY based on the difference between the average cost incurred by FDA in the review of a human drug application subject to priority review in the previous fiscal year, and the average cost incurred in the review of an application that is not subject to priority review in the previous fiscal year. This notice establishes the rare pediatric disease priority review fee rate for FY 2015 and outlines the payment procedures for such fees.

FOR FURTHER INFORMATION CONTACT: Robert J. Marcarelli, Office of Financial Management, Food and Drug Administration, 8455 Colesville Rd., COLE–14202F, Silver Spring, MD 20993–0002, 301–796–7223.

SUPPLEMENTARY INFORMATION:

I. Background

Section 908 of FDASIA (Pub. L. 112–144) added section 529 to the FD&C Act (21 U.S.C. 360ff). In section 529, Congress encouraged development of new human drugs and biological products for prevention and treatment of certain rare pediatric diseases by offering additional incentives for obtaining FDA approval of such products. Under section 529, the sponsor of an eligible human drug application submitted 90 days or more after July 9, 2012, for a rare pediatric disease (as defined in section 529(a)(3) of the FD&C Act) shall receive a priority review voucher upon approval of the rare pediatric disease product application. The recipient of a rare pediatric disease priority review voucher may either use the voucher for a future human drug application submitted to FDA under section 505(b)(1) of the FD&C Act (21 U.S.C. 355(b)(1)) or section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)), or transfer (including by sale) the voucher to another party that may then use it for a human drug application. A priority review is a review conducted with a Prescription Drug User Fee Act (PDUFA) goal date of 6 months after the receipt or filing date, depending on the type of application. Information regarding the PDUFA goals is available at: *http://www.fda.gov/downloads/forindustry/userfees/prescriptiondruguserfee/ucm270412.pdf.*

The applicant that uses a rare pediatric disease priority review voucher is entitled to a priority review of its eligible human drug application but must pay FDA a rare pediatric disease priority review user fee in addition to any fee required by PDUFA for the application. Information regarding the rare pediatric disease priority review voucher program is available at: *http://www.fda.gov/Drugs/DevelopmentApprovalProcess/DevelopmentResources/ucm375479.htm.*

This notice establishes the rare pediatric disease priority review fee rate for FY 2015 at $2,562,000 and outlines FDA's procedures for payment of rare pediatric disease priority review user fees. This rate is effective on October 1, 2014, and will remain in effect through September 30, 2015.

II. Priority Review User Fee for FY 2015

Under section 529(c)(2) of the FD&C Act, the amount of the rare pediatric disease priority review user fee is determined each fiscal year based on the difference between the average cost incurred by FDA in the review of a human drug application subject to priority review in the previous fiscal year, and the average cost incurred by FDA in the review of a human drug application that is not subject to priority review in the previous fiscal year. The rare pediatric disease priority review voucher fee is intended to cover the incremental costs for FDA to do a priority review on a human drug application that would otherwise get a standard review. The formula provides the Agency with the added resources to conduct a priority review while still ensuring a robust rare pediatric disease priority review voucher program that is consistent with the Agency's public health goal of encouraging the development of new human drugs and biological products for rare pediatric diseases.

A priority review is a review conducted with a PDUFA goal date of 6 months after the receipt or filing date, depending on the type of application. Under the PDUFA goals letter, FDA has committed to reviewing and acting on 90 percent of the applications granted priority review status within this expedited timeframe. Normally, an application for a human drug or biological product will qualify for priority review if the product is intended to treat a serious condition and, if approved, would provide a significant improvement in safety or

effectiveness. An application that does not receive a priority designation will receive a standard review. Under the PDUFA goals letter, FDA has committed to reviewing and acting on 90 percent of standard applications within 10 months of the receipt or filing date depending on the type of application. A priority review involves a more intensive level of effort and a higher level of resources than a standard review.

Section 529 of the FD&C Act specifies that the rare pediatric disease priority review voucher fee amount must be based on the difference between the average cost incurred by the Agency in the review of a human drug application subject to a priority review in the previous fiscal year, and the average cost incurred by the Agency in the review of a human drug application not subject to a priority review in the previous fiscal year. FDA is setting a fee for FY 2015, which is to be based on standard cost data from the previous fiscal year, FY 2014. However, the FY 2014 submission cohort has not been closed out yet, thus the cost data for FY 2014 are not complete. The latest year for which FDA has complete cost data is FY 2013. Furthermore, because FDA has never tracked the cost of reviewing applications that get priority review as a separate cost subset, FDA estimated this cost based on other data that the Agency has tracked. FDA uses data that the Agency estimates and publishes on its Web site each year—standard costs for review. FDA does not publish a standard cost for ''the review of a human drug application subject to priority review in the previous fiscal year.'' However, we expect all such applications would contain clinical data. The standard cost application categories with clinical data that FDA publishes each year are: (1) New drug applications (NDAs) for a new molecular entity (NME) with clinical data and (2) biologics license applications (BLAs) with clinical data.

The standard cost worksheets for FY 2013 show standard costs (rounded to the nearest thousand dollars) of $5,122,000 for a NME NDA, and $4,090,000 for a BLA. Based on these standard costs, the total cost to review the 53 applications in these two categories in FY 2013 (31 NME NDAs and 22 BLAs with clinical data) was $248,762,000. (Note: These numbers exclude the President's Emergency Plan for AIDS Relief NDAs; no investigational new drug (IND) review costs are included in this amount.) Twenty of these applications (12 NDAs and 8 BLAs) received priority review, which would mean that the remaining 33 received standard reviews. Because a priority review compresses a review schedule that ordinarily takes 10 months into 6 months, FDA estimates that a multiplier of 1.67 (10 months divided by 6 months) should be applied to non-priority review costs in estimating the effort and cost of a priority review as compared to a standard review. This multiplier is consistent with published research on this subject. In the article ''Developing Drugs for Developing Countries,'' published in *Health Affairs,* Volume 25, Number 2, in 2006, the comparison of historical average review times by David B. Ridley, Henry G. Grabowski, and Jeffrey L. Moe supports a priority review multiplier in the range of 1.48 to 2.35. The multiplier derived by FDA falls well below the mid-point of this range. Using FY 2013 figures, the costs of a priority and standard review are estimated using the following formula:

$$(20\ \alpha \times 1.67) + (33\ \alpha) = \$248{,}762{,}000$$

Where ''α'' is the cost of a standard review and ''α times 1.67'' is the cost of a priority review. Using this formula, the cost of a standard review for NME NDAs and BLAs is calculated to be $3,746,000 (rounded to the nearest thousand dollars) and the cost of a priority review for NME NDAs and BLAs is 1.67 times that amount, or $6,256,000 (rounded to the nearest thousand dollars). The difference between these two cost estimates, or $2,510,000, represents the incremental cost of conducting a priority review rather than a standard review.

For the FY 2015 fee, FDA will need to adjust the FY 2013 incremental cost by the average amount by which FDA's average costs increased in the 3 years prior to FY 2014, to adjust the FY 2013 amount for cost increases in FY 2014. That adjustment, published in the **Federal Register** on August 1, 2014 (see 79 FR 44807 at 44809), is 2.0813 percent for the most recent year, not compounded. Increasing the FY 2013 incremental priority review cost of $2,510,000 by 2.0813 percent results in an estimated cost of $2,562,000 (rounded to the nearest thousand dollars). This is the rare pediatric disease priority review user fee amount for FY 2015 that must be submitted with a priority review voucher for a human drug application in FY 2015, in addition to any PDUFA fee that is required for such an application.

III. Fee Schedule for FY 2015

The fee rate for FY 2015 is set out in Table 1 of this document:

TABLE 1—RARE PEDIATRIC DISEASE PRIORITY REVIEW SCHEDULE FOR FY 2015

Fee category	Fee rate for FY 2015
Applications Submitted With a Rare Pediatric Disease Priority Review Voucher in Addition to the Normal PDUFA Fee	$2,562,000

IV. Payment Procedures for Rare Pediatric Disease Priority Review Voucher Fees Incurred in FY 2015

Under section 529(c)(4)(A) of the FD&C Act, the priority review voucher user fee is due (i.e., the obligation to pay the fee is incurred) when a sponsor notifies FDA of its intent to use the voucher. In order to comply with this section the sponsor must contact FDA before providing official notification of its intent to use the voucher.

Rare pediatric disease priority review voucher fees incurred for FY 2015 will be payable after Congress provides an appropriation of these fees. Accordingly, FDA will issue an invoice to the sponsor who has incurred a rare pediatric disease priority review voucher fee when it receives the sponsor's notification of intent to use the voucher or, if an appropriation of rare pediatric disease priority review voucher fees has not been enacted at that time, after the appropriation has been enacted. The invoice will include instructions on how to pay the fee via wire transfer or check.

As noted above, if a sponsor uses a rare pediatric disease priority review voucher for a human drug application, the sponsor would incur the rare pediatric disease priority review voucher fee in addition to any PDUFA fee that is required for the application. The sponsor would need to follow FDA's normal procedures for timely payment of the PDUFA fee for the human drug application.

Dated: September 26, 2014.

Peter Lurie,

Associate Commissioner for Policy and Planning.

[FR Doc. 2014–23320 Filed 9–30–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology descriptions follow.

Device and System for Enhancing Cardiopulmonary Resuscitation

Description of Technology: The invention pertains to devices and systems for externally compressing or collapsing peripheral vasculature during Cardiopulmonary Resuscitation (CPR) to redirect blood to the torso and head regions, thereby enhancing the likelihood of CPR success. The system includes a plurality of sleeves adapted for placement on a patient's limbs during CPR, each sleeve including at least one inflatable fluid chamber and at least one inflation source fluidly coupled to each of the inflatable fluid chambers of the sleeves. The sleeve chambers can be inflated to a desired compression pressure and maintained at the desired compression pressure continuously throughout CPR to prevent or restrict blood flow in the limbs. The desired compression pressure can be sufficient to redirect substantial blood volume from the patient's limbs to the patient's torso and head regions during CPR.

Potential Commercial Applications:

- Cardiopulmonary resuscitation.
- Peripheral blood occlusion.

Competitive Advantages: Improves CPR outcomes—

- Can be used with or independent of automated CPR devices and pharamacotherapies.
- Can be utilized in a public setting by a lay person.
- Extent and duration of vascular occlusion can be specifically prescribed.
- May be used to alter preload.
- May increase pulse wave velocity and/or wave reflection magnitude resulting in increased pulse and/or perfusion pressures.

Development Stage:

- Early-stage
- Prototype

Inventor: Matthew T. Oberdier (NIA).

Intellectual Property: HHS Reference No. E–224–2014/0—US Provisional Application No. 62/042,588 filed 27 Aug 2014.

Licensing Contact: Michael Shmilovich, Esq., CLP; 301–435–5019; *shmilovm@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute on Aging is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology. For collaboration opportunities, please contact Vio Conley, M.S. at *conleyv@ctep.nci.nih.gov* or 240–276–5531.

A Current Amplifier for Local Coil Pre-amplification of NMR/MRI Signals

Description of Technology: The magnetic resonance imaging (MRI) systems are used for a variety of imaging application. The present invention discloses an improving MRI device and method by amplifying signals received by resonant NMR coils of MRI systems. It utilizes positive feedback from low-noise Field-Effect Transistor to amplify the signal current that can be coupled out to receiving loops positioned externally without loss in sensitivity. Therefore, the NMR coil can be flexibly positioned near internal tissues and used to develop high-resolution images in highly invasive situations. The disclosed device can be developed in kit form as integrated modules that are designed to be added to tuned NMR receiver coils and tailored to deliver specific gains at NMR frequencies.

Potential Commercial Applications:

- Medical and scientific research.
- Device for diagnostic.

Competitive Advantages:

- Sensitivity.
- Easy to be integrated into the existed device.

Development Stage:

- In vitro data available.
- In vivo data available (animal).

Inventors: Joseph A. Murphy-Boesch, Stephen J. Dodd, Alan P. Koretsky, Chunqi Qian (all of NINDS).

Publications:

1. Qian C, et al. Wireless amplified nuclear MR detector (WAND) for high-spatial-resolution MR imaging of internal organs: preclinical demonstration in a rodent model. Radiology. 2013 Jul;268(1):228–36. [PMID 23392428]
2. Qian C, et al. Sensitivity enhancement of remotely coupled NMR detectors using wirelessly powered parametric amplification. Magn Reson Med. 2012 Sep;68(3):989–96. [PMID 22246567]
3. Mueller OM, et al. Preamplifier circuit for magnetic resonance system. US Patent 5,545,999 (1996).
4. Ratzel D. Low-noise preamplifier, in particular, for nuclear magnetic resonance (NMR). US Patent 7,123,090 (2006).

Intellectual Property: HHS Reference No. E–122–2014/0—US Patent Application No. 61/989,795 filed 07 May 2014.

Licensing Contact: John Stansberry, Ph.D.; 301–435–5236; *stansbej@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Neurological Disorders and Stroke, Laboratory for Functional and Molecular Imaging, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize a surgically implantable NMR detector, battery powered, for imaging of the pituitary. For collaboration opportunities, please contact Joseph Murphy-Boesch at *murphyboeschj@mail.nih.gov.*

Inhibition of HIV Infection Through Chemoprophylaxis Using Emtricitabine and Tenofovir

Description of Technology: The invention is directed to prophylactic administration of emtricitabine (FTC) in combination with tenofovir or its prodrug, tenofovir disoproxil fumarate (TDF), to protect against transmission of human immunodeficiency virus (HIV) infection. Also disclosed are other nucleoside reverse transcriptase inhibitors (NRTIs) and nucleotide reverse transcriptase inhibitors (NtRTIs) that, when administered in combination, protect against HIV infection. CDC researchers demonstrated that daily pre-exposure prophylaxis (PrEP) with a combination of antiretroviral NRTI and NtTRI drugs, including FTC and TDF, significantly

increases the level of protection against HIV transmission.

Potential Commercial Applications: Oral, prophylactic delivery of combination drugs to inhibit HIV infection.

Development Stage:

- In vivo data available (animal).
- In vivo data available (human).

Inventors: Walid Heneine, Thomas Folks, Robert Janssen, Ronald Otten, J. Gerardo Garcia-Lerma (all of CDC).

Publications:

1. Garcia-Lerma J, et al. Prevention of rectal SHIV transmission in macaques by daily or intermittent prophylaxis with emtricitabine and tenofovir. PLoS Med. 2008 Feb;5(2):e28. [PMID 18254653]
2. Garcia-Lerma J, et al. Intermittent prophylaxis with oral truvada protects macaques from rectal SHIV infection. Sci Transl Med. 2010 Jan 13;2(14):14ra4. [PMID 20371467]

Intellectual Property: HHS Reference No. E–195–2013/0—

- US Provisional Application No. 60/764,811 filed 3 Feb 2006.
- US Patent Application No. 11/669,547 filed 31 Jan 2007.
- PCT Application No. PCT/US2007/002926 filed 01 Feb 2007.
- European Patent No. 2015753 issued 01 May 2013.
- German Patent No. 2015753 issued 01 May 2013.
- French Patent No. 2015753 issued 01 May 2013.
- U.K. Patent No. 2015753 issued 01 May 2013.
- Australian Patent No. 2007212583 issued 25 Mar 2013.
- Canadian Patent Application No. 2641388 filed 01 Aug 2008.
- Indian Patent Application No. 7408/DELNP/2008 filed 01 Jul 2008.

Licensing Contact: Tara L. Kirby, Ph.D.; 301–435–4426; *tarak@mail.nih.gov*.

Synthetic Peptides With Antimicrobial Activity

Description of Technology: This technology relates to a class of synthetic peptides with antimicrobial activity. The lead candidate identified among this class is EC5. The EC5 peptide has shown efficient binding and selective bactericidal activity against *E. coli* and *P. aeruginosa,* while having little activity against *S. aureus, S. epidermidis, B. cereus,* and *K. pneumonia.* EC5 shows inhibitory activity at low concentrations (MIC 8 μg/ml for *E. coli* and 8–32 μg/ml for *P. aeruginosa*) and appears to bind to, disrupt, and permeabilize the bacterial cell membranes in a manner similar to Polymyxin B. EC5 also appears to retain its bactericidal activity in the presence of platelets and plasma, while exhibiting little cytotoxic activity or hemolytic activity against red blood cells, in vitro. EC5's profile of activity and low toxicity suggest it may be a favorable candidate for drug development, as an independent or combination therapy and for specific bacterial detection/diagnostics. With the increasing prevalence of drug resistant bacterial infections, there is a need to develop novel antimicrobial agents that are specific, safe, and effective.

Potential Commercial Applications: Antimicrobial therapy.

Competitive Advantages:

- Significant and specific bactericidal activity.
- Promising in vitro safety profile.

Development Stage:

- Early-state.
- In vitro data available.

Inventors: Chintamani Atreya (FDA), Ketha Mohan (FDA), Shilpakala Sainath Rao (ORISE Contract Fellow).

Publication: Sainath Rao S, *et al.* A peptide derived from phage display library exhibits antibacterial activity against E. coli and Pseudomonas aeruginosa. PLoS ONE 8(2): e56081. [PMID 23409125]

Intellectual Property: HHS Reference No. E–226–2012/0—PCT Application PCT/US2012/050969 filed 15 Aug 2012.

Licensing Contact: Edward (Tedd) Fenn; 424–297–0336; *Tedd.fenn@nih.gov*.

Collaborative Research Opportunity: The Food and Drug Administration, Center for Biologics Evaluation and Research, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize drug development, as an independent or combination therapy and for bacterial diagnostics. For collaboration opportunities, please contact Nisha Narayan at 240–402–9770.

Dated: September 27, 2014.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–23345 Filed 9–30–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Diseases and Pathophysiology of the Visual System Study Section.

Date: October 23–24, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel Convention Center, 900 10st NW., Washington, DC 20015.

Contact Person: Nataliya Gordiyenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301.435.1265, *gordiyenkon@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Radiation Therapeutics and Biology Study Section.

Date: October 23–24, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Language and Communication.

Date: October 24, 2014.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Dana Jeffrey Plude, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Synthetic and Biological Chemistry.

Date: October 27, 2014.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: JW Marriott Hotel New Orleans, 614 Canal St., New Orleans, LA 70130.

Contact Person: William A Greenberg, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov*.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Tumor Progression and Metastasis Study Section.
Date: October 29–30, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites, Convention Center, 900 10th Street NW., Washington, DC 20001.
Contact Person: Rolf Jakobi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7806, Bethesda, MD 20892, 301–495–1718, *jakobir@mail.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurodifferentiation, Plasticity, Regeneration and Rhythmicity Study Section.
Date: October 29–30, 2014.
Time: 8:00 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Crystal City, 2399 Jefferson Davis Hwy., Arlington, VA 22202.
Contact Person: Joanne T. Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Myocardial Ischemia and Metabolism Study Section.
Date: October 29–30, 2014.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Kimm Hamann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814, Bethesda, MD 20892, 301–435–5575, *hamannkj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PARR 13–109 Mechanistic Insights from Birth Cohorts.
Date: October 29, 2014.
Time: 1:30 p.m. to 3:30 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: Fungai Chanetsa, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Digestive Sciences.
Date: October 29, 2014.
Time: 2:00 p.m. to 3:30 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: Bonnie L Burgess-Beusse, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–435–1783, *beusseb@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Psychosocial Development and Behavioral Medicine.
Date: October 29, 2014.
Time: 12:00 p.m. to 2:00 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: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, (301) 594–3292, *niw@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 25, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–23333 Filed 9–30–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Social Sciences and Population Studies B Study Section.
Date: October 24, 2014.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.
Contact Person: Valerie Durrant, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 827–6390, *durrantv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Research Project Grant.
Date: October 28, 2014.
Time: 12:00 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: Gabriel B. Fosu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Innovative Immunology Research.
Date: October 30, 2014.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Andrea Keane-Myers, Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Dr., Room 4218, Bethesda, MD 20892, (301) 435–1221, *andrea.keanne-myers@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Genomics and Epigenetics.
Date: October 30, 2014.
Time: 12:00 p.m. to 2:00 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: Richard A. Currie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1108, MSC 7890, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Drug Discovery and Molecular Pharmacology.
Date: October 31, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jeffrey Smiley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194,

MSC 7804, Bethesda, MD 20892, 301–594–7945, *smileyja@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 2014.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–23337 Filed 9–30–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 03, 2014, 11:30 a.m. to October 03, 2014, 06:00 p.m., Torrance Marriott South Bay, 3635 Fashion Way, Torrance, CA, 90503 which was published in the **Federal Register** on September 19, 2014, 79 FR 56382.

The meeting will start at 7:00 a.m. and end at 7:30 a.m. The meeting date and location remain the same. The meeting is closed to the public.

Dated: September 26, 2014.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–23332 Filed 9–30–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Ancillary Studies: Group 1, Vitamin D.

Date: October 24, 2014.

Time: 9:00 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Cognitive Fitness Ancillary Study.

Date: November 17, 2014.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Wellner, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 706, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–4721, *rw175w@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Diversity R03s in Digestive Diseases and Nutrition.

Date: December 1, 2014.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Digestive Diseases and Nutrition Institutional Training Grant Conflicts.

Date: December 2, 2014.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Ancillary R01 Telephone Review.

Date: December 3, 2014.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 25, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–23336 Filed 9–30–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; SBIR/STTR Informatics.

Date: October 23, 2014.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Melinda Jenkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, 301–437–7872, *jenkinsml2@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; SBIB Clinical Pediatric and Fetal Applications.
Date: October 23, 2014.
Time: 11:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: John Firrell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, 301–435–2598, *firrellj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 13–374 Modeling of Social Behavior.
Date: October 30, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Tomas Drgon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–1017, *tdrgon@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Review of Neuroscience AREA Grant Applications.
Date: October 30–31, 2014.
Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.
Contact Person: Richard D Crosland, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, 301–435–1220, *crosland@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Biophysical, Physiological, Pharmacological and Bioengineering Neuroscience.
Date: October 30–31, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Row Hotel, 2015 Massachusetts Avenue NW., Washington, DC 20892
Contact Person: Sharon S Low, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 5104, Bethesda, MD 20892–5104, 301–237–1487, *lowss@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Clinical and Integrative Cardiovascular Sciences Study Section.
Date: October 30–31, 2014.
Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, 2401 M Street NW., Washington, DC 20037.
Contact Person: Delvin R Knight, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 4128, Bethesda, MD 20892–7814, 301.435.1850, *knightdr@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group; Vaccines Against Microbial Diseases Study Section.
Date: October 30–31, 2014.
Time: 8:30 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.
Contact Person: Jian Wang, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892, (301) 435–2778, *wangjia@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Medical Imaging Investigations.
Date: October 30, 2014.
Time: 11:45 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Mehrdad Mohseni, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7854, Bethesda, MD 20892, 301–435–0484, *mohsenim@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Psychosocial Risks and Disease Prevention.
Date: October 31, 2014.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, (301) 594–3292, *niw@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 25, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–23334 Filed 9–30–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA Review: Immunology.
Date: October 22, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Patrick K Lai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301–435–1052, *laip@csr.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Structure and Regeneration Study Section.
Date: October 22–23, 2014.
Time: 8:00 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.
Contact Person: Daniel F. McDonald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814,Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Systemic Injury By Environmental Exposure.
Date: October 22–23, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Patricia Greenwel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR14–092: Bioengineering Research Partnership (BRP).
Date: October 22, 2014.
Time: 1:00 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Ping Fan, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301-408-9971, *fanp@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Chemo/Dietary Prevention Study Section.
Date: October 23–24, 2014.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham Grand Chicago Riverfront Hotel, 71 E Wacker Drive, Chicago, IL 60601.
Contact Person: Sally A. Mulhern, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892, (301) 408–9724, *mulherns@csr.nih.gov*.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Cancer Etiology Study Section.
Date: October 23–24, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Marriott Wardman Park Washington DC Hotel, 2660 Woodley Road NW., Washington, DC 20008.
Contact Person: Svetlana Kotliarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, 301–594–7945, *kotliars@mail.nh.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neural Oxidative Metabolism and Death Study Section.
Date: October 23–24, 2014.
Time: 8:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.
Contact Person: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function B Study Section.
Date: October 23–24, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Pier 2620 Hotel on Fisherman's Wharf, 2620 Jones Street, San Francisco, CA 94133.
Contact Person: C. L. Albert Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, 301–435–1016, *wangca@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group; Immunity and Host Defense Study Section.
Date: October 23–24, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.
Contact Person: Scott Jakes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301–435–1506, *jakesse@mail.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Cellular Mechanisms in Aging and Development Study Section.
Date: October 23–24, 2014.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.
Contact Person: John Burch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–408–9519, *burchjb@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Drug Discovery for the Nervous System Study Section.
Date: October 23–24, 2014.
Time: 8:00 a.m. to 10:00 a.m.
Agenda: To review and evaluate grant applications.
Place: DoubleTree Hilton Hotel Washington DC-Crystal City, 300 Army Navy Drive, Arlington, VA 22202.
Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics A Study Section
Date: October 23–24, 2014.
Time: 8:30 a.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue, NW., Washington, DC 20037.
Contact Person: Michael M Sveda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1114, MSC 7890, Bethesda, MD 20892, 301–435–3565, *svedam@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 2014.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–23331 Filed 9–30–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.
Date: October 9, 2014.
Time: 10:00 a.m. to 11:00 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).
Contact Person: Sherry L Dupere, Ph.D., Chief, Scientific Review Branch, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–7510, 301–451–3415, *duperes@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Function, Integration, and Rehabilitation Sciences Subcommittee.
Date: October 14, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Row Hotel, 2015 Massachusetts Avenue NW., Washington, DC 20036.
Contact Person: Joanna Kubler-Kielb, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and

Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–7510, 301–435–6916, *kielbj@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Health, Behavior, and Context Subcommittee.

Date: October 20–21, 2014.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, Bethesda, MD 20814.

Contact Person: Michele C. Hindi-Alexander, Ph.D., Scientific Review Branch, National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health & Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20812–7510, (301) 435–8382, *hindialm@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: October 21, 2014.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, National Institutes of Health, NICHD, SRB, 6100 Executive Blvd., Bethesda, MD 20892, 301–435–6902, *PETER.ZELAZOWSKI@NIH.GOV*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Pediatrics Subcommittee.

Date: October 23–24, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rita Anand, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5b01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Biobehavioral and Behavioral Sciences Subcommittee.

Date: October 30–31, 2014.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Marita R. Hopmann, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6911, *hopmannm@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Review of SBIR Applications.

Date: October 30, 2014.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Scientific Review Branch, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Reproduction, Andrology, and Gynecology Subcommittee.

Date: October 31, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dennis E. Leszczynski, Ph.D., Scientific Review Administrator, Scientific Review Branch, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5b01, Bethesda, MD 20892, (301) 435–2717, *leszczyd@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Developmental Biology Subcommittee.

Date: November 6–7, 2014.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6100 Executive Blvd., Room 5B01–G, Bethesda, MD 20892, 301–435–6878, *wedeenc@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: November 6, 2014.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Scientific Review Branch, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: November 12, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dennis E. Leszczynski, Ph.D., Scientific Review Administrator, Scientific Review Branch, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Rm. 5B01, Bethesda, MD 20892, (301) 435–6884, *leszczyd@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Population Sciences Subcommittee.

Date: November 13, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, 1515 Rhode Island Ave. NW., Washington, DC 20005.

Contact Person: Carla T. Walls, Ph.D., Scientific Review Administrator, Scientific Review Branch, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 25, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–23335 Filed 9–30–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the

standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://beta.samhsa.gov/workplace.*

FOR FURTHER INFORMATION CONTACT: Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 7–1051, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Gamma-Dynacare Medical Laboratories, 6628 50th Street NW., Edmonton, AB Canada T6B 2N7, 780–784–1190.

HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc., Aegis Analytical Laboratories)

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Fortes Laboratories, Inc., 25749 SW Canyon Creek Road, Suite 600, Wilsonville, OR 97070, 503–486–1023.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818–737–6370, (Formerly: SmithKline Beecham Clinical Laboratories)

Redwood Toxicology Laboratory, 3700650 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Janine Denis Cook,

Chemist, Division of Workplace Programs, Center for Substance Abuse Prevention, SAMHSA.

[FR Doc. 2014–23329 Filed 9–30–14; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2014–0027; OMB No. 1660–0106]

Agency Information Collection Activities: Proposed Collection; Comment Request; Integrated Public Alert and Warning Systems (IPAWS) Inventory

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the proposed revision of the information collection concerning public alert and warning systems at the Federal, State, territorial, Tribal and local levels of government which is necessary for the inventory and evaluation and assessment of existing public alert and warning resources and their integration with the Integrated Public Alert and Warning System.

DATES: Comments must be submitted on or before December 1, 2014.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2014–0027. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., 8NE, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Wade Witmer, Deputy Director, National Continuity Program IPAWS Division, FEMA, (202) 646–2523 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at, Director, Records Management Division, 500 C Street SW., Washington, DC 20472–3100, facsimile number (202) 212–4701 or email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Presidential Executive Order 13407 establishes the policy for an effective, reliable, integrated, flexible, and comprehensive system to alert and warn the American people in situations of war, terrorist attack, natural disaster, or other hazards to public safety and wellbeing. The Executive Order requires that DHS establish an inventory of public alert and warning resources, capabilities, and the degree of integration at the Federal, State, territorial, Tribal, and local levels of government. The IPAWS implements the requirements of the Executive Order. The information collected has, and will continue to consist of the public alert and warning systems, as well as the communication systems being used for collaboration and situational awareness at the Local Emergency Operations Center (EOC) level and higher. This information will help FEMA identify the technologies currently in use or desired for inclusion into IPAWS.

Collection of Information

Title: Integrated Public Alert and Warning Systems (IPAWS) Inventory.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0106.

FEMA Forms: FEMA Form 142–1–1 IPAWS Inventory.

Abstract: FEMA will be conducting an inventory, evaluation and assessment of the capabilities of Federal, State, territorial, Tribal, and local government alert and warning systems. The IPAWS Inventory and Evaluation Survey collects data to facilitate the integration of public alert and warning systems. It also reduces Federal planning costs by leveraging existing State systems.

Affected Public: State, local, or Tribal Government.

Number of Respondents: 3,200.

Number of Responses: 3,200.

Estimated Total Annual Burden Hours: 6,400.

Estimated Cost: There are no recordkeeping, capital, start-up or maintenance costs associated with this information collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: September 17, 2014.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2014–23413 Filed 9–30–14; 8:45 am]

BILLING CODE 9110–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2546–14; DHS Docket No. USCIS–2011–0014]

RIN 1615–ZB31

Filing Procedures for Employment Authorization and Automatic Extension of Existing Employment Authorization Documents for Liberians Eligible for Deferred Enforced Departure

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Notice.

SUMMARY: On September 26, 2014, President Obama issued a memorandum to the Secretary of Homeland Security (''Secretary''), Jeh Charles Johnson, directing him to extend for an additional 24 months the deferred enforced departure (DED) of certain Liberians and to provide for work authorization during that period. The DED extension runs from October 1, 2014, through September 30, 2016. This Notice provides instructions for eligible Liberians on how to apply for the full 24 month extension of employment authorization. Finally, this Notice provides instructions for DED-eligible Liberians on how to apply for permission to travel outside the United States during the 24 month DED period.

USCIS will issue new employment authorization documents (EADs) with a September 30, 2016 expiration date to Liberians whose DED has been extended under the Presidential Memorandum of September 26, 2014, and who apply for EADs under this extension. Given the timeframes involved with processing EAD applications, DHS recognizes that not all DED-eligible Liberians will receive new EADs before their current EADs expire on September 30, 2014. Accordingly, this Notice also automatically extends for 6 months (through March 30, 2015) the validity of DED-related EADs that have an expiration date of September 30, 2014, and explains how Liberians covered under DED and their employers may determine which EADs are automatically extended and their impact on Employment Eligibility Verification (Form I–9) and E-Verify processes.

DATES: The 24 month extension of DED is valid through September 30, 2016. The 6-month automatic extension of employment authorization for Liberians who are covered under DED, including the extension of their EADs as specified in this Notice, is effective on October 1, 2014, and expires on March 30, 2015.

FOR FURTHER INFORMATION CONTACT:

- For further information on DED, including guidance on the application process for EADs and additional information on eligibility, please visit the Temporary Protected Status (TPS) Web page at *http://www.USCIS.gov/tps* and choose ''Temporary Protected Status & Deferred Enforced Departure'' from the menu on the left. You can find specific information about DED for Liberia by selecting ''DED Granted Country: Liberia'' from the menu on the left of the TPS or DED Web pages.
- You can also contact the DED Operations Program Manager at the Status and Family Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2060; or by phone at (202) 272–1533 (this is not a toll-free number). Note: The phone number provided here is solely for questions regarding this DED Notice. It is not for individual case status inquiries.
- Applicants seeking information about the status of their individual cases can check Case Status Online available at the USCIS Web site at *http://www.USCIS.gov,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).
- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Presidential Memorandum Extending DED for Certain Liberians

Pursuant to his constitutional authority to conduct the foreign relations of the United States, President Obama has directed that Liberian nationals (and eligible persons without nationality who last resided in Liberia) who are physically present in the United States, have continuously resided in the United States since October 1, 2002, and who remain eligible for DED, be provided DED for an additional 24 month period. *See Presidential Memorandum—Deferred Enforced Departure for Liberians,* September 26, 2014 (''Presidential Memorandum'') at *http://www.whitehouse.gov/the-press-office/2014/09/26/presidential-memorandum-deferred-enforced-departure-liberians.* Note that only individuals who held TPS under the former Liberia TPS designation as of September 30, 2007 are eligible for DED, provided they have continued to meet all other eligibility criteria established by the President. The President also directed the Secretary to implement the necessary steps to authorize employment authorization for eligible Liberians for 24 months from October 1, 2014 through September 30, 2016.

Employment Authorization and Filing Requirements

How will I know if I am eligible for employment authorization under the Presidential Memorandum that extended DED for certain Liberians for 24 months?

The DED extension and the procedures for employment authorization in this Notice apply only to Liberian nationals (and persons without nationality who last habitually resided in Liberia) who:

- Are physically present in the United States;
- Have continuously resided in the United States since October 1, 2002; and
- Are currently under a grant of DED.

The above eligibility criteria are described in the Presidential Memorandum. Only individuals who held TPS under the former Liberia TPS designation as of September 30, 2007 are eligible for DED under this

extension, provided they have continued to meet all other eligibility criteria established by the President. This DED extension does not include any individual:

- Who would be ineligible for TPS for the reasons provided in section 244(c)(2)(B) of the Immigration and Nationality Act, 8 U.S.C. 1254a(c)(2)(B);
- Whose removal the Secretary determines is in the interest of the United States;
- Whose presence or activities in the United States the Secretary of State has reasonable grounds to believe would have potentially serious adverse foreign policy consequences for the United States;
- Who has voluntarily returned to Liberia or his or her country of last habitual residence outside the United States;
- Who was deported, excluded, or removed prior to September 26, 2014; or
- Who is subject to extradition.

What will I need to file if I am covered by DED and would like to have evidence of employment authorization?

If you are covered under DED for Liberia, and would like evidence of your employment authorization during the 24 month extension of DED, you must apply for an EAD by filing an Application for Employment Authorization (Form I–765). USCIS will begin accepting these applications on October 1, 2014. Although this Notice automatically extends DED-related EADs that have a printed validity date of September 30, 2014 for an additional 6-months through March 30, 2015, if you would like evidence of your continued employment authorization through September 30, 2016, you must file an Application for Employment Authorization (Form I–765) as soon as possible to avoid gaps in work authorization. Please carefully follow the Application for Employment Authorization (Form I–765) instructions when completing the application for an EAD. When filing the Application for Employment Authorization (Form I–765), you must:

- Indicate that you are eligible for DED by putting ''(a)(11)'' in response to Question 16 on Application for Employment Authorization (Form I–765);
- Include a copy of your last Notice of Action (Form I–797) showing that you were approved for TPS as of September 30, 2007, if such copy is available. Please note that evidence of TPS as of September 30, 2007 is necessary to show that you were covered under the previous DED for Liberia through September 30, 2014; and
- Submit the fee for the Application for Employment Authorization (Form I–765).

The regulations require individuals covered under DED who request an EAD to pay the fee prescribed in 8 CFR 103.7(b)(1)(i)(HH) for the Application for Employment Authorization (Form I–765). *See also* 8 CFR 274a.12(a)(11) (employment authorized for DED-covered aliens); and 8 CFR 274a.13(a) (requirement to file EAD application if EAD desired). If you are unable to pay the fee, you may apply for an application fee waiver by completing a Request for Fee Waiver (Form I–912) or submitting a personal letter requesting a fee waiver, and providing satisfactory supporting documentation.

How will I know if USCIS will need to obtain biometrics?

If biometrics are required to produce the secure EAD, you will be notified by USCIS and scheduled for an appointment at a USCIS Application Support Center.

Where do I submit my completed Application for Employment Authorization (Form I–765)?

Mail your completed Application for Employment Authorization (Form I–765) and supporting documentation to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are applying through the U.S. Postal Service.	USCIS Attn: DED Liberia, P.O. Box 6943, Chicago, IL 60680–6943.
You are using a non-U.S. Postal Service delivery service.	USCIS Attn: DED Liberia, 131 S. Dearborn 3rd Floor, Chicago, IL 60603–5517.

Can I file my Application for Employment Authorization (Form I–765) electronically?

No. Electronic filing is not available when filing Application for Employment Authorization (Form I–765) based on DED.

Extension of Employment Authorization and EADs

May I request an interim EAD at my local USCIS office?

No. USCIS will not issue interim EADs to individuals eligible for DED under the Presidential Memorandum at local offices.

Am I eligible to receive an automatic 6-month extension of my current EAD through March 30, 2015?

You are eligible for an automatic 6-month extension of your EAD if you are a national of Liberia (or person having no nationality who last habitually resided in Liberia), you are currently covered by DED through September 30, 2014, and you are within the class of persons approved for DED by the President.

This automatic extension covers EADs issued on the Employment Authorization Document (Form I–766) bearing an expiration date of September 30, 2014. These EADs must also bear the notation ''A–11'' on the face of the card under ''Category.''

When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Employment Eligibility Verification (Form I–9)?

You can find a list of acceptable document choices on the ''Lists of Acceptable Documents'' for Employment Eligibility Verification (Form I–9). You can find additional detailed information on the USCIS I–9 Central Web page at *http://www.uscis.gov/I-9Central.* Employers are required to verify the identity and employment authorization of all new employees by using Employment Eligibility Verification (Form I–9). Within 3 days of hire, an employee must present proof of identity and employment authorization to his or her employer.

You may present any document from List A (reflecting both your identity and employment authorization), or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization). You may present an acceptable receipt for List A, List B, or List C documents as described in the Employment Eligibility Verification (Form I–9) Instructions. An EAD is an acceptable document under ''List A.'' Employers may not reject a document based on a future expiration date.

If your EAD has an expiration date of September 30, 2014, and states ''A–11'' under ''Category,'' it has been extended automatically for 6 months by virtue of this **Federal Register** Notice, and you may choose to present your EAD to your employer as proof of identity and employment authorization for Employment Eligibility Verification (Form I–9) through March 30, 2015 (see the subsection titled ''*How do my employer and I complete the Employment Eligibility Verification*

(Form I–9) using an automatically extended EAD for a new job?'' for further information). To minimize confusion over this extension at the time of hire, you may also show your employer a copy of this **Federal Register** Notice confirming the automatic extension of employment authorization through March 30, 2015. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, or a combination of one selection from List B and one selection from List C.

What documentation may I show my employer if I am already employed but my current DED-related EAD is set to expire?

Even though EADs with an expiration date of September 30, 2014 that state ''A–11'' under ''Category'' have been automatically extended for 6 months by virtue of this **Federal Register** Notice, your employer will need to ask you about your continued employment authorization once September 30, 2014 is reached to meet its responsibilities for Employment Eligibility Verification (Form I–9). However, your employer does not need a new document to reverify your employment authorization until March 30, 2015, the expiration date of the automatic extension. Instead, you and your employer must make corrections to the employment authorization expiration dates in Section 1 and Section 2 of Employment Eligibility Verification (Form I–9) (see the subsection titled, ''*What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?''* for further information). In addition, you may also show this **Federal Register** Notice to your employer to avoid confusion about what to do for Employment Eligibility Verification (Form I–9).

By March 30, 2015, the expiration date of the automatic extension, your employer must reverify your employment authorization. At that time, you must present any document from List A or any document from List C on Employment Eligibility Verification (Form I–9) to reverify employment authorization, or an acceptable List A or List C receipt described in the Employment Eligibility Verification (Form I–9) Instructions. Your employer should complete either Section 3 of the Employment Eligibility Verification (Form I–9) originally completed for the employee or, if this Section has already been completed or if the version of Employment Eligibility Verification (Form I–9) has expired (check the date in the upper right-hand corner of the form), complete Section 3 of a new Employment Eligibility Verification (Form I–9) using the most current version. Note that your employer may not specify which List A or List C document employees must present, and cannot reject an acceptable receipt.

Can my employer require that I provide any other documentation to prove my status, such as proof of my Liberian citizenship?

No. When completing Employment Eligibility Verification (Form I–9), including re-verifying employment authorization, employers must accept any documentation that appears on the ''Lists of Acceptable Documents'' for Employment Eligibility Verification (Form I–9) that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers may not request documentation that does not appear on the ''Lists of Acceptable Documents.'' Therefore, employers may not request proof of Liberian citizenship when completing Employment Eligibility Verification (Form I–9) for new hires or reverifying the employment authorization of current employees. If presented with EADs that have been automatically extended, employers should accept such EADs as valid List A documents so long as the EADs reasonably appear to be genuine and to relate to the employee. Refer to the Note to Employees section of this Notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

What happens after March 30, 2015, for purposes of employment authorization?

After March 30, 2015, employers may no longer accept the EADs that this **Federal Register** Notice automatically extended. Before that time, however, USCIS will endeavor to issue new EADs to eligible individuals covered by DED who request them. These new EADs will have an expiration date of September 30, 2016, and can be presented to your employer for completion of Employment Eligibility Verification (Form I–9). Alternatively, you may choose to present any other legally acceptable document or combination of documents listed on the Employment Eligibility Verification (Form I–9).

How do my employer and I complete Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?

When using an automatically extended EAD to fill out Employment Eligibility Verification (Form I–9) for a new job prior to March 30, 2015, you and your employer should do the following:

1. For Section 1, you should:

a. Check ''An alien authorized to work'';

b. Write your alien number (USCIS number or A-number) in the first space (your EAD or other document from DHS will have your USCIS number or A-number printed on it; the USCIS Number is the same as your A-number without the A prefix); and

c. Write the automatic extension date (March 30, 2015) in the second space.

2. For Section 2, employers should record the:

a. Document title;

b. Document number; and

c. Automatically extended EAD expiration date (March 30, 2015).

No later than March 30, 2015, employers must reverify the employee's employment authorization in Section 3 of Employment Eligibility Verification (Form I–9).

What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?

If you are an existing employee who presented a DED-related EAD that was valid when you first started your job, but that EAD has now been automatically extended, you and your employer should correct your previously completed Employment Eligibility Verification (Form I–9) as follows:

1. For Section 1, you should:

a. Draw a line through the expiration date in the second space;

b. Write ''March 30, 2015'' above the previous date;

c. Write ''DED Ext.'' in the margin of Section 1; and

d. Initial and date the correction in the margin of Section 1.

2. For Section 2, employers should:

a. Draw a line through the expiration date written in Section 2;

b. Write ''March 30, 2015'' above the previous date;

c. Write ''DED Ext.'' in the margin of Section 2; and

d. Initial and date the correction in the margin of Section 2.

By March 30, 2015, when the automatic extension of EADs expires, employers must reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiring'' alert for an automatically extended EAD?

If you are an employer who participates in E-Verify, and you have an employee covered under DED who provided a DED-related EAD when he or she first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when this EAD is about to expire. Usually, this message is an alert to complete Section 3 of the Employment Eligibility Verification (Form I–9) to reverify an employee's employment authorization. For existing employees with DED-related EADs that have been automatically extended, employers should dismiss this alert by clicking the red ''X'' in the ''dismiss alert'' column and follow the instructions above explaining how to correct the Employment Eligibility Verification (Form I–9). By March 30, 2015, employment authorization must be reverified in Section 3. Employers should never use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@dhs.gov.* Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (I–9 and E-Verify), employers may also call the U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline at 800–255–8155 (TTY 800–237–2515), which offers language interpretation in numerous languages, or email OSC at *osccrt@usdoj.gov.*

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email at *I-9Central@dhs.gov.* Calls are accepted in English and many other languages. Employees or applicants may also call the OSC Worker Information Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin related to Employment Eligibility Verification (Form I–9) and E-Verify. The OSC Worker Information Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the List of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Employment Eligibility Verification (Form I–9) Instructions. Employers may not require extra or additional documentation beyond what is required for Employment Eligibility Verification (Form I–9) completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Employment Eligibility Verification (Form I–9) differs from the Social Security Administration, DHS, or Department of State records.

Employers may not terminate, suspend, delay training, withhold pay, lower pay or take any adverse action against an employee based on the employee's decision to contest a TNC or because the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). An employee who believes he or she was discriminated against by an employer in the E-Verify process based on citizenship or immigration status, or based on national origin, may contact OSC's Worker Information Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Employment Eligibility Verification (Form I–9) and E-Verify procedures is available on the OSC Web site at *http://www.justice.gov/crt/about/osc/* and the USCIS Web site at *http://www.dhs.gov/E-verify.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each State may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are covered by DED and/or show you are authorized to work based on DED. Examples are:

(1) Your unexpired EAD that has been automatically extended, or your EAD that has not expired;

(2) A copy of this **Federal Register** Notice if your EAD is automatically extended under this Notice;

(3) A copy of your past Application for Temporary Protected Status Notice of Action (Form I–797), if you received one from USCIS, coupled with a copy of the Presidential Memorandum extending DED for Liberians; and/or

(4) If there is an automatic extension of work authorization, a copy of the fact sheet from the USCIS DED Web site that provides information on the automatic extension.

Check with the government agency regarding which document(s) the agency will accept. You may also provide the agency with a copy of this **Federal Register** Notice.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to verify the current immigration status of applicants for public benefits. If such an agency has denied your application based solely, or in part, on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request can be found at the SAVE Web site at *http://www.USCIS.gov/save,* then by choosing ''How to Correct Your Records'' from the menu on the right.

Travel Authorization and Advance Parole

Individuals covered under DED who would like to travel outside of the

United States must apply for and receive advance parole by filing an Application for Travel Document (Form I–131) with required fee before departing from the United States. *See* 8 CFR 223.2(a). DHS has the discretion to determine whether to grant advance parole and cannot guarantee advance parole in all cases. In addition, possession of an advance parole document does not guarantee that you will be permitted to re-enter the United States, as that is a decision that will be made by an immigration officer at the port of entry upon your return. If you seek advance parole to travel to Liberia or to your country of last habitual residence outside the United States, you will risk being found ineligible to re-enter the United States under DED because the Presidential Memorandum excludes persons ''who have voluntarily returned to Liberia or his or her country of last habitual residence outside the United States.''

You may submit your completed Application for Travel Document (Form I–131) with your Application for Employment Authorization (Form I–765). If you are filing the Application for Travel Document (Form I–131) concurrently with your Application for Employment Authorization (Form I–765), please submit both applications and supporting documentation to the proper address in Table 1.

If you choose to file an Application for Travel Document (Form I–131) separately, please submit the application along with supporting documentation that you qualify for DED to the proper address in Table 2.

TABLE 2—MAILING ADDRESSES

If . . .	Mail to . . .
You are applying through the U.S. Postal Service	USCIS, Attn: DED Liberia, P.O. Box 6943, Chicago, IL 60680–6943.
You are using a non-U.S. Postal Service delivery service	USCIS, Attn: DED Liberia, 131 S. Dearborn 3rd Floor, Chicago, IL 60603–5517.

If you have a pending or approved Application for Employment Authorization (Form I–765), please submit the Notice of Action (Form I–797) along with your Application for Travel Document (Form I–131) and supporting documentation.

León Rodríguez,

Director, U.S. Citizenship and Immigration Services.

[FR Doc. 2014–23507 Filed 9–30–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FHC–2014–N207; FXFR1334088TWG0W4–123–FF08EACT00]

Trinity Adaptive Management Working Group; Public Meeting and Teleconference

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public meeting of the Trinity Adaptive Management Working Group (TAMWG). The TAMWG is a Federal advisory committee that affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight.

DATES: *Public meeting:* TAMWG will meet from 9 a.m. to 5 p.m. Pacific Time on Thursday, October 30, 2014, and from 9 a.m. to 1 p.m. Pacific Time on Friday, October 31, 2014. *Deadlines:* For deadlines on submitting written material, please see ''Public Input'' under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The in-person meeting will be held at the Trinity County Library, 351 Main Street, Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: To participate in the teleconference contact Elizabeth W. Hadley, Redding Electric Utility, 777 Cypress Avenue, Redding, CA 96001; telephone: 530–339–7327; email: *ehadley@reupower.com* or Joseph C. Polos, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521; telephone: 707–822–7201; *joe_polos@fws.gov*. Individuals with a disability may request an accommodation by sending an email to the point of contact, and those accommodations will be provided.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Trinity Adaptive Management Working Group (TAMWG) will hold a meeting.

Background

The TAMWG affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight. A workshop will be held to build a common understanding among TRRP policy makers (TMC), stake holders (TAMWG), and staff about what has been learned over the past 10 years of the Program's Implementation and how that information will influence future management and restoration actions. The general agenda items for this workshop are listed below.

Meeting Agenda

- Review of the ROD,
- SAB review and recommendations,
- Evolution of channel rehabilitation strategy, and
- Public Comment.

The final draft agenda will be posted on the Internet at *http://www.fws.gov/arcata* when available.

Public Input

If you wish to	You must contact Elizabeth Hadley **(FOR FURTHER INFORMATION CONTACT)** no later than
Submit written information or questions for the TAMWG to consider during the teleconference	October 23, 2014.

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the TAMWG to consider during the meeting. Written statements must be received by the date listed in ''Public Input,'' so that the information may be available to the TAMWG for their consideration prior to this meeting. Written statements must be supplied to Elizabeth Hadley in one of the following formats: One hard copy with original signature, one electronic copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, PowerPoint, or rich text file).

Registered speakers who wish to expand on their oral statements, or those who wished to speak but could not be accommodated on the agenda, may submit written statements to Elizabeth Hadley up to 7 days after the meeting.

Meeting Minutes

Summary minutes of the meeting will be maintained by Elizabeth Hadley (see **FOR FURTHER INFORMATION CONTACT**). The draft minutes will be available for public inspection within 14 days after the meeting, and will be posted on the TAMWG Web site at *http://www.fws.gov/arcata.*

Dated: September 25, 2014.

Joseph C. Polos,

Supervisory Fish Biologist, Arcata Fish and Wildlife Office, Arcata, California.

[FR Doc. 2014–23385 Filed 9–30–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMP00000 L13110000.PP0000 15XL1109PF]

Notice of Public Meeting, Pecos District Resource Advisory Council Meeting, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the Bureau of Land Management's (BLM) Pecos District Resource Advisory Council (RAC) will meet as indicated below.

DATES: The RAC will meet on November 12, 2014, at the Eddy Building, 111 Blackjack Pershing, Fort Stanton, New Mexico, 88322, from 9 a.m.–4 p.m. The public may send written comments to the RAC at the BLM Pecos, 2909 West 2nd Street, Roswell, New Mexico 88201.

FOR FURTHER INFORMATION CONTACT: Howard Parman, Pecos District Office, Bureau of Land Management, 2909 West 2nd Street, Roswell, New Mexico 88201, 575–627–0212. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 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 10-member Pecos District RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the BLM's Pecos District. Planned agenda items include: An overview of the Fort Stanton-Snowy River Cave National Conservation Area; a presentation by the Fort Stanton Cave Study Project; the status of Section 7 consultation with the U.S. Fish and Wildlife Service concerning the Lesser Prairie-Chicken; the BLM's new land use planning initiative, Planning 2.0; the concepts and application of regional mitigation for projects on public land; a report from the Lesser Prairie-Chicken Area of Critical Environmental Concern Grazing Subcommittee; and an overview of open trench monitoring.

All RAC meetings are open to the public. There will be a half-hour public comment period at 11 a.m. for any interested members of the public who wish to address the RAC. Depending on the number of persons wishing to speak and time available, the time for individual comments may be limited.

Samuel R.M. Burton,

Acting Deputy State Director, Lands and Resources.

[FR Doc. 2014–23383 Filed 9–30–14; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[145R5065C6; RX.59799806.1001001; RR85818000]

Notice To Reopen the Public Comment Period for Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation is reopening the public comment period for the proposed information collection: Collection and Compilation of Water Pipeline Field Performance Data. In response to comments received during the 60-day public comment period, the Bureau of Reclamation has revised the information collection request and will publish a second **Federal Register** notice offering a 30-day comment period prior to submitting the information collection request to the Office of Management and Budget for approval.

DATES: Submit written comments on the information collection request on or before October 31, 2014.

ADDRESSES: Send all written comments concerning this notice to Lee Sears, Materials Engineering Research Laboratory, 86–68180, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225; or via email to *lsears@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To request more information on this information collection or to request a copy of the collection instrument, please contact Lee Sears at 303–445–2392.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Bureau of Reclamation announced its intentions of submitting the Collection and Compilation of Water Pipeline Field Performance Data information collection request to the Office of Management and Budget for approval. The required 60-day public comment period for this information collection request was initiated by a notice published in the **Federal Register** on February 26, 2014 (79 FR 10842). The information being collected is required to comply with a request from Congress for the Bureau of Reclamation to assemble data on pipeline reliability for specific types of pipes.

Comments were received from two entities regarding the information collection during the comment period that ended on April 14, 2014.

II. Summary of Proposed Changes, Comments and Responses

Comments received that are similar in nature have been categorized into technical and general comments, and in some instances have been combined with related comments. Comments and our responses on general issues are arranged first, followed by comments and responses regarding the technical text of the information collection request.

General Comments and Responses

Comment: Nonprofit organizations, such as the American Water Works Association, routinely conduct surveys and other studies. For these studies, the organizations generally protect the underlying data from public disclosure if the entity providing the data wishes to keep the data private (absent a legal action or other extraordinary circumstance). The survey instrument recognizes this issue and concern: ''Privacy: Your name and facility name will not appear in our results. Access to documents and electronic files is restricted to the research staffs at Battelle, the Water Research Foundation, and the Bureau of Reclamation, who are working on the study.'' However, there is a possibility that a request for the data could be made under the Freedom of Information Act.

Response: Access to documents and electronic files is restricted to the research staffs at Battelle, the Water Research Foundation, and the Bureau of Reclamation. Prior to sharing this data with the Water Research Foundation and the Bureau of Reclamation, Battelle will substitute unique identifiers for specific facility names to protect privacy should a request for data be made under the Freedom of Information Act. The information collection instrument has been revised accordingly.

Comment: The stated expected completion time of ''up to 60 minutes'' seems insufficient, especially for large utilities that may have numerous breaks to report and/or may require significant manipulation of their internal datasets to report the information as requested.

Response: This estimate is based on discussions with large utilities. The language has been updated so that 60 minutes is clarified to be an estimate, not a maximum.

Comment: It is important for the sample methodology to be available for comment. The survey and accompanying documents do not answer: (1) Which entities will be contacted; (2) how they will be selected; (3) what is the goal sample mix of respondents; or, (4) who within an entity will be contacted? These and other sampling issues are very important issues that warrant public notice and comment.

Response: Selection is documented in Supporting Statement B. All large water utilities will be contacted.

Comment: The survey should clearly indicate the type of pipe materials the survey covers.

Response: The survey has been altered to clarify the types of pipe materials covered.

Comment: If the survey considers distribution pipelines, the survey should divide the pipelines based upon pipelines that are: 12″ (distribution), and 14+″ in diameter (transmission), rather than using 12″ as the dividing line between distribution and transmission pipelines.

Response: The survey does not define 12″ and below as distribution lines and 14″ and above as transmission lines. We recommend staying with small less than 12″ and large greater than 12″, which can be argued as well, but the data can be sorted.

Comment: The survey should provide a mechanism for respondents to answer whether they are satisfied with a particular pipe material/method of corrosion protection.

Response: This data is not necessary for the study.

Comment: Question B1.b. of the survey instrument would be more accurate as ''Pipe Segment Identifier.''

Response: This change has been incorporated.

Comment: Question A6 of the survey instrument: To allow for better segmentation and balancing of the eventual utility sample after collection, States should be listed individually in the drop down menu in alphabetical order rather than in predetermined regions.

Response: The drop down menu has been updated to incorporate this change.

Comment: Question B1.d. of the survey instrument: Pipe manufacturer is data that is not gathered in many cases.

Response: This data could help identify differences in pipes of the same type. This data will not be required to participate.

Comment: While the supporting documents outline specifics of the survey instrument in detail, it was difficult to find similar clarity in the specifics of the sampling plan for the study. The selection of utilities to include in the database can introduce significant response bias if important factors such as installation, maintenance and soil conditions are not adequately understood and balanced in the database.

Response: Selection is documented in Supporting Statement B. Bias will be limited by requesting data from all large water utilities.

Comment: The survey does not seem to provide a framework for respondents to provide uniform and consistent information. Based on the examples provided, if a respondent has data that meets a certain threshold, it can then upload the data in any manner that it would like. Without a method to ensure uniformity in response, the data will vary greatly.

Response: We allow this to encourage more responses and Battelle will standardize the data.

Technical Comments and Responses

Comment: Question B1.i of the survey instrument: Resistivity is useful for corrosivity, while pH and acidity are essentially the same and never a significant factor for corrosion.

Response: We will gather all data identified in the survey instrument if available. Soil pH is a significant corrosion consideration and therefore will be included in the survey instrument.

Comment: Question B1.i. of the survey instrument: It will be critical to specify in advance the soil corrosivity data requested in the survey will be for the specific soils around the breakage, and not a general soil corrosivity profile throughout a given utility's service area. Generalized regional soil information may not provide adequate understanding of the causal factors in pipe breakage if a utility has a wide variety of soils present in its service area.

Response: This question has been updated to request specific soil data near the break.

Comment: Data Collection: Unless all of the data is collected only from drinking water, it is critical to provide a column to specify the liquid(s) being transported within the pipe (e.g. raw water, treated water, storm water, sewage, etc.) to understand the internal reactions that might be occurring between the liquid and the interior of the pipe.

Response: A question has been added concerning quality of conveyed water (potable or non-potable).

Comment: ''Break Type:'' definitions should be provided so that respondents across different utilities are reporting the same types of breaks in the same manner. This may require sub-categories including location of break (mid-pipe, at joint, etc.). As the debate over allowable break frequency or pipe service life ensues, understanding what types of breaks will likely be critical to assessing performance standards. Additionally, the types of breaks occurring may help point to installation issues or other causal factors that are not inherent to the types of pipe as well as help assess the adequacy of various protection and maintenance methods (such as corrosion control).

Response: A question about location has been added to the survey.

Comment: Causal information regarding breaks is critical, and should

be added to the data required for participation and requested from eventual utility participants. Forensic understanding such as the type(s) of causal factors likely involved in the break is important to understanding the role of the material in the failure. If causal factor data are not available in a utility's database, they should be excluded from the sample due to this insufficiency.

Response: This question is included in the survey. While we agree this piece of information is important, we expect many utilities may not document the causes. Because this column will be in our database, we will be able to compare data sets with and without this data. We are not planning to exclude utilities that do not have this data.

Comment: It would be beneficial to better understand causal factors in breakage to also be able to cross-reference other site conditions that can significantly contribute to breakage such as the presence of stray current (nearby light rail operations or other stray current sources), bury depth and/or exposure, roadway or other surface traffic conditions that would lead to cyclic stress, presence of fixture restraint to compensate for hammering and surges, and pipe installation (such as if a water transmission line is installed within a crossing through a larger sewer or storm water pipe).

Response: Some of these factors will be difficult to collect for many breaks events. While these data could be important, we do not want to require all of them for fear it would create an undue burden on the respondent. Burial depth has been added to the survey.

Comment: Installation and maintenance capabilities and practices are likely key variables in the relative pipe breakage experience between utilities. It is easy to imagine significant sample bias if, for instance, utilities that predominantly use one type of pipe have poorer installation skills or maintenance programs than utilities that predominantly use a different type of pipe. Great care in balancing the utility sample base will be necessary, as well as perhaps standardizing and normalization of the resulting data base post collection.

Response: While this could be true, it will be difficult to evaluate as these practices change over time. The data accuracy of the response would be based not only on the knowledge of the utility respondent, but also on the respondent history with its utility, which could vary greatly.

Comment: ''The Bureau of Reclamation has obtained the services of an outside to survey water facilities and collect water data on water pipeline corrosion related failures. The information requested is required to comply with a request from Congress for the Bureau of Reclamation to assemble data on pipeline reliability for specific types of pipes.'' The following questions pertain to the statement above:

1. Which entity?
2. Just facilities or also water professionals, such as engineers?
3. What type of data?
4. Internal corrosion, external corrosion or both? How do you define and quantify a corrosion related failure? By percentage cause or other method?
5. How do you define a failure?

Response: Supporting Statements A and B have been revised and clarified to address these questions.

Comment: While the notice focuses on failures, the survey asks for break/leak information—a leak appears to be very different from a failure, and a break could be different than a failure.

Response: Breaks and leaks are the focus of the survey. Failure is equivalent to a break and leaks may lead to breaks/failures. Examples of break/leak type have been added to the information collection documents.

Comment: The survey does not seem to limit the pipe materials surveyed. ''If it is determined that you have high-quality water pipeline performance data, we will email you, which will allow you to upload that data in any format you choose.'' The following questions and comments pertain to the statement above:

1. Who will determine if the data is high quality?
2. This would seem to make it very difficult, if not impossible, to standardize the content of the data provided.

Response: The purpose of the data collection, ''to collect high-quality field data on the performance of water pipelines of different materials,'' is clearly noted in the information collection instrument. Battelle will make the determination on data quality and will standardize the data provided.

Comment: The Bureau of Reclamation indicates that it is only concerned with failures that require a pipeline to be taken out of service. If the Bureau of Reclamation's standard is used, the survey should require respondents to answer whether the leak/failure required the pipeline to be taken out of service. The Bureau of Reclamation has used a subset of the Department of Transportation oil and gas data instead of the dataset including all failures, lending further credence to this approach. Under this scenario, any failure that does not lead to a disruption in service is irrelevant.

Response: A question has been added to the survey concerning the duration of service interruption caused by the break/leak.

Comment: The survey should eliminate past leaks/breaks/failures that are not likely to occur now or in the future. There are numerous factors that could explain these past failures, including, but not limited to:

- Installation errors.
- Maintenance issues.
- Old technologies, such as leadite joints or lead caulked joints.
- Practices that have been modified so that the leak/break/failure would not occur now.

Response: This would be nearly impossible to eliminate. By collecting this data and documenting any known shifts in materials or practices, the failure rates will carry more value.

Comment: The survey needs to define key terms and provide options for respondents to select certain types of breaks so that there is some uniformity. It is important for ''corrosion-related'' leaks/breaks/failures to be defined to understand how the survey will evaluate the information. Multiple factors may be the cause of a particular failure, and the survey should provide a method to identify and rank the relative importance of concurrent causes of a leak or failure. This is especially important when dealing with potential corrosion-related problems where installation, maintenance or other issues may be the actual cause of the problem.

When dealing with labeling failures, it is important that there are checks in place on the front and back ends of the survey. This is often challenging because many utility records are not complete enough to capture this information. This is particularly important in potential corrosion-related failures where installation, maintenance or other factors may be the cause of a corrosion-related failure. These factors include, but are not limited to:

- Installation problems with the pipe and/or corrosion protection.
- Soil type and/or soil conditions in specific areas of a pipe line.
- Environmental conditions.
- Frost depth, etc.
- Other contributing factors (road reconstruction may create impacts).

Response: The question on break/leak type has been clarified to address this comment.

Comment: The survey should capture whether the utility has provided specific training to categorize the cause of the failure, conducts forensic evaluations, maintains forensic records

and other issues to ensure accurate reporting.

Response: This will be evident by the utility responses to the current questions.

Comment: It is also important for there to be checks on the type of pipe and corrosion protection reported.

Response: Battelle has a quality assurance/quality check process in place to check data from respondents.

Comment: It is especially important that cast iron pipe failures are not inaccurately described as ductile iron pipe failures.

Response: Battelle has a quality assurance/quality check process in place to check data from respondents.

III. Data

Title: Collection and Compilation of Water Pipeline Field Performance Data.

OMB Control Number: 1006–XXXX.

Description of respondents: Large water utility and Federal facility pipe data managers.

Frequency: One-time collection.

Estimated completion time: 3 minutes (making participation decision); 15 minutes (online survey); 2 minutes (online refusal survey); 60 minutes (uploading data); and 2 minutes (data upload refusal survey).

Estimated Total Number of Respondents: 418 (making participation decision); 209 (online survey); 209 (online refusal survey); 68 (uploading data); and 68 (data upload refusal survey).

Estimated Number of Responses per Respondent: 1.

Estimated Total of Annual Responses: 418 (making participation decision); 209 (online survey); 209 (online refusal survey); 68 (uploading data); and 68 (data upload refusal survey).

Estimated Total Annual Burden Hours on Respondents: 21 hours (making participation decision); 53 hours (online survey); 7 hours (online refusal survey); 68 hours (uploading data); and 3 hours (data upload refusal survey), for a combined total of 152 hours.

IV. Request for Comments

We invite your comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) the accuracy of our burden estimate for the proposed collection of information;

(c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

We will summarize all comments received regarding this notice. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

V. Public Disclosure

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: September 25, 2014.

Richard W. LaFond,

Chief, Civil Engineering Services Division Bureau of Reclamation.

[FR Doc. 2014–23405 Filed 9–30–14; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–753, 754, and 756 (Third Review)]

Cut-To-Length Carbon Steel Plate From China, Russia, and Ukraine; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on cut-to-length carbon steel plate from China and/or the termination of the suspended investigations on cut-to-length carbon steel plate from Russia and Ukraine would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is October 31, 2014. Comments on the adequacy of responses may be filed with the Commission by December 9, 2014. For further information concerning the conduct of this proceeding and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 1, 2014.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On October 24, 1997, the Department of Commerce (''Commerce'') suspended antidumping duty investigations on imports of cut-to-length carbon steel plate from China, Russia, and Ukraine (62 FR 61766, 61773, and 61780, November 19, 1997). Following the first five-year reviews by Commerce and the Commission, effective September 17, 2003, Commerce issued a continuation of the suspended investigations on imports of cut-to-length carbon steel plate from China, Russia, and Ukraine (68 FR 54417). The suspension agreement concerning cut-to-length carbon steel plate from China was subsequently terminated and an antidumping duty order was imposed effective November 3, 2003 (68 FR 60081). Following the second five-year reviews by Commerce and the Commission, effective November 10, 2009, Commerce issued a continuation of the antidumping duty order on cut-to-length carbon steel plate from China and of the suspended investigations on cut-to-length carbon steel plate from Russia and Ukraine (74 FR 57994). The Commission is now conducting third reviews to determine whether

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 14–5–318, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

revocation of the antidumping duty order on cut-to-length carbon steel plate from China and/or the termination of the suspended investigations on cut-to-length carbon steel plate from Russia and Ukraine would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China, Russia, and Ukraine.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined the Domestic Like Product as cut-to-length plate, co-extensive with Commerce's scope, produced by U.S. mills or cut from coiled plate by service centers. In its full first and second five-year review determinations, the Commission defined the Domestic Like Product as cut-to-length plate, including cut-to-length plate made from microalloy steel. One Commissioner defined the Domestic Like Product differently in the first five-year reviews.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations and its full first and second five-year review determinations, the Commission defined the Domestic Industry to include all producers of the Domestic Like Product, whether toll producers, integrated producers, or processors. One Commissioner defined the Domestic Industry differently in the first five-year reviews.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR § 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 31, 2014. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is December 9, 2014. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested

information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on cut-to-length carbon steel plate from China and/or the termination of the suspended investigations on cut-to-length carbon steel plate from Russia and Ukraine on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2008.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2013, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2013 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2013 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of

Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2008, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: September 24, 2014.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–23070 Filed 9–30–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Dental Implants, DN 3033;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Nobel Biocare Services AG and Nobel Biocare USA, LLC on September 25, 2014. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain dental implants. The complaint names as respondents Neodent USA, Inc of Andover, MA and JJGC Indústria e Comércio de Materiais Dentários S/A of Brazil. The complainant requests that the Commission issue a permanent exclusion order, cease and desist orders, and a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3033'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures.[4]) Persons with

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

Issued: September 25, 2014.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–23300 Filed 9–30–14; 8:45 am]

BILLING CODE 7020–02–P

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OVC) Docket No. 1672]

Office for Victims of Crime

Amendment to the Anti-Terrorism and Emergency Assistance Program Guidelines

AGENCY: Office for Victims of Crime.

ACTION: Notice.

SUMMARY: The U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime (OVC) announces a minor clarifying amendment to its Anti-Terrorism Emergency Assistance Program (AEAP) Guidelines.

DATES: This amendment will go into effect on October 31, 2014.

FOR FURTHER INFORMATION CONTACT: Eugenia Pedley, Program Manager, Office for Victims of Crime, at 202–307–5983.

SUPPLEMENTARY INFORMATION: The U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime (OVC) published a notice soliciting comments on the proposed amendment to the Anti-Terrorism Emergency Assistance Program (AEAP) Guidelines (available at 67 FR 4822, and at *http://www.gpo.gov/fdsys/pkg/FR-2002-01-31/pdf/02-2299.pdf*), on July 18, 2014 (79 FR 42055), and received no comments. OVC now amends section V.D. of its AEAP Guidelines, as described in the July notice, to read as follows:

D. Crime Victim Compensation Grants are designed to provide supplemental funding to a state crime victim compensation program that reimburses victims for out-of-pocket expenses related to their victimization in cases of terrorism or mass violence occurring within the United States. Grant funds may be used to pay claims to victims for costs that include, but are not limited to, medical and mental health counseling costs, funeral and burial costs, and lost wages. (See Section VI for other allowable activities and costs.) Emergency Reserve funds may not be used to cover property damage or property loss. (See ''Definitions'' section of these Guidelines.) OVC may provide funding to the state program, public agencies, or other organizations to cover expenses not traditionally covered (whether in amount or type) by state crime victim compensation programs. OVC will coordinate such awards with state crime victim compensation programs, in the event that such an award is made to another organization.

In the event that a state recovers expenses on behalf of a victim from a collateral source, the amount recovered must be used either (1) to assist other victims of the same crime for which funds were awarded, or (2) returned to OVC and deobligated in accordance with the applicable provisions of the OJP Financial Guide and Section 1402(e)of VOCA.

As noted in the July notice, the amendment is not intended to, and will not, affect any state authority governing state compensation programs. It merely clarifies that that state administering agencies for state crime victim compensation programs may apply for and administer (if awarded discretionary funding by OVC, if the state accepts the funding, and if allowable under state law and regulation) supplemental crime victim compensation grants that cover reimbursement of expenses not traditionally covered (in amount and/or type) by the applicant state's crime victim compensation program. The amendments corrects a potential ambiguity so as to reduce potential delay in awarding critical funding after an incident of mass violence or terrorism.

Joye E. Frost,

Director, Office for Victims of Crime.

[FR Doc. 2014–23343 Filed 9–30–14; 8:45 am]

BILLING CODE 4410–18–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 October 31, 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 Numbers: M–2014–007–M; M–2014–008–M; M–2014–009–M; M–2014–010–M; M–2014–011–M; M–2014–012–M; M–2014–013–M; M–2014–014–M; M–2014–015–M; M–2014–016–M; M–2014–017–M; and M–2014–018–M.

Petitioner: Wilson County Holdings, LLC, 950 17th Street, Suite 2600, Denver, Colorado 80202.

Mine: Fredonia Project, MSHA I.D. No. 14–01756, located in Wilson County, Kansas.

Regulations Affected: 30 CFR 57.22301(a), 30 CFR 57.22301(b)(2)(i) and 30 CFR 57.22301(c) (Atmospheric monitoring systems (I–A, II–A, and V–A mines)); 30 CFR 57.22302 (Approved equipment (I–A and V–A mines)); 30 CFR 57.22312 (Distribution boxes (II–A and V–A mines)); 30 CFR 22501 (Personal electric lamps (I–A, I–B, I–C, II–A, II–B, III, IV, V–A, and V–B mines)); 30 CFR 57.22207 and 30 CFR 22207(b)(1) (Booster fans (I–A, II–A, III, and V–A mines)); 30 CFR 57.22227(a) and 30 CFR 57.22227(c)(1) (Approved testing devices (I–A, I–B, I–C, II–A, II–B, III, IV, V–A, and V–B mines)); 30 CFR 57.22234 and 57.22234(b) (Actions at 1.0 percent methane (I–A, I–B, III, V–A, and V–B mines)).

Modification Request: The petitioner requests a modification of the existing standards stating that the operator is not required to comply with the standards at its Fredonia, Kansas Oil Extraction Project (the Fredonia Project) but instead may substitute equipment classified as explosion proof by the National Electric Code (NEC). By filing this petition, the petitioner does not concede that the cited standards applies or will apply in the future. However, should the standards be applied, it will result in a diminution of safety to the miners.

The petitioner states that:

(1) The filing of this petition should not be construed in any way, or in any subsequent forum, as a waiver of Wilson County Holding's right to contest any citation issued pursuant to the regulation listed above at any time in the future.

(2) The Fredonia Project is among the latest of a handful of underground oil recovery projects. In general, conventional oil recovery only recovers a relatively small percentage of the oil in place. In addition, modern developments intended to increase that recovery, such as horizontal and directional drilling, are subject to a variety of technological limitations which make them unsuitable for conventional recovery methods in certain circumstances, such as fields at depths less than 2400 feet. Therefore, the majority of the recoverable resource in many older, shallower fields is stranded in place because recovery is either uneconomical or not technically feasible.

(3) The Fredonia Project addresses the recoverability issue by sinking a shaft through the oil bearing formation and mining out a room approximately 10–20 feet below the bottom of the formation. All underground areas will be completely lined with concrete or shotcrete and there will be no exposed ground at the time that equipment installation and operations begin. Special ports are preinstalled in the wall of the production area through which the wells are to be drilled. These ports are designed to be integrated into the drilling process and there will be no additional penetration of the shotcrete lining.

(4) When the underground area is completed, three drill rigs will be installed in the round portion of the underground area (the production room) to drill upward into the formation allowing oil to drain out naturally. The oil will be collected into pipes and closed vessels and pumped out to the surface for transport to a refinery.

(5) The drilling process to be used at the Fredonia Project is quite similar to that used at conventional oil and gas drilling sites. The bit used is slightly bigger than the drill pipe on which it is mounted. During drilling, specially formulated ''drilling mud'' is pumped into the hole at a pressure intended to remove cuttings and to hold back any surges in formation pressure that may lead to uncontrolled flow of gases of fluids uphole. The mud is then circulated back uphole through the annulus around the drill pipe, carrying with it the cuttings from the drill as well as any water or hydrocarbons that are released. The entire mixture is collected in a sealed system in which the mud, cuttings, water, and hydrocarbons are pumped to the surface where they are separated and treated appropriately. Although a small amount of the used mud mixture might be exposed to the mine atmosphere during routing drilling operations, the only circumstances in which any material amount of the used mud mixture or any of its components could escape into the mine atmosphere would be either where a spike in formation pressures overwhelmed the controls in the collection system, where a leak developed in the system, or in the event of a component malfunction. As with other conventional drilling operations, great care is taken during the drilling process to ensure that no gases or fluids escape back up the drill hole as it is advanced toward the target. Those precautions become increasingly intensive as the drill approaches the hydrocarbon bearing formation. In the case of the Fredonia Project, all systems intended for collection of drilling fluids are designed to withstand pressures of up to 740 Pounds Per Square Inch Gauge (psig) even though tests show that formation pressures are not anticipated to exceed 100 psig.

(6) Because it is vitally important for both the safety of the miners and the commercial success of the project, quite a bit of care has been taken in developing a monitoring system intended to detect any condition that might lead to an escape of hydrocarbons or other toxic material from the system. In general, the detection and monitoring systems are digitally based, automated and remotely monitored. A variety of sensors (e.g., lower explosive limit (LEL), methane, smoke, system pressures, temperature), digitally measure and transmit the data measured to different locations. The data can be monitored remotely from the surface and is made accessible to those authorized to see it. Each monitoring system is also programmed to either: (1) Alert personnel and/or (2) automatically trigger corrective action (e.g., increase ventilation or open or close valves) and/or (3) shut down critical operations in the event a pre-set alarm, corrective action, or shut-down level is exceeded. This is known as a ''fail-to-safe'' system. In other words, critical component failure, or excursion of a measured value above or below a set point is programmed to automatically trigger a condition-appropriate response, up to and including critical system shut down.

(7) In addition to the monitoring and control systems, the petitioner recognizes the importance of the ventilation system as integral to its overall safe operation. Ventilation for normal operations begins at the surface

near the entrance to the Supply Air Emergency Escape Shaft. There are 2–100 horse power fans whose speed is controlled by variable frequency drives (VFD's) with a butterfly-type valve shutoff damper at the downstream exit of each fan duct located just upstream of the plenum. The fans will operate in a ''Lead-Lag'' configuration where one fan operates continuously (lead) and is supported by the back-up (lag) in the event the lead fan is inoperable or is cycled for wear issues. Each fan has a 56,000 cfm capacity at 1.75 in-wg for fan blade 2-position at 1800 revolutions per minute. The VFD's are part of the fan control system providing control of flow rates. Air flow progresses as follows:

(a) Air is drawn into the fan inlet then flows through the Supply Air Shaft into the underground Alcove. From the Alcove a portion of the supply air is forced through cooling coils and then into the Motor Control Center (MCC) Room. This air removes heat from the area then exits via a duct to the main hoist opening in the Drilling Room. The MCC ductwork (28 inches in diameter) and the discharge duct (54 inches by 18 inches) to the main shaft is galvanized steel.

(b) The balance of the air remaining in the Alcove then exits via a flow regulator (roll-up door) where it then ventilates the Pump Room and Drilling Room areas.

(c) Air is circulated around the Drilling Room by three axial flow fans located on the Rib or Back to ensure thorough mixing and movement of air.

(d) All air flows then converge to exit upwards via the Main Shaft to the surface and atmosphere.

Ventilation flow is to help ensure that workers and staff have adequate ventilation and that the MCC Room maintains a positive relative pressure to the Pump and Drilling Rooms, and this air is exhausted directly to the main shaft.

The supply air fans provide more than 100 percent back up as a standby, or to provide higher velocity and flow through the mine as needed. Approximate total air quantity is expected to be 25,000 cfm allowing for up to 14 people underground, operation of diesel skid steer loader underground, heat removal from equipment and personnel, and dilution of potential contaminants including strata gas. Adjustments will be made to meet requirements for cooling and contaminant dilution as necessary.

Notwithstanding the fact that the system is deliberately ''over-designed'' in terms of anticipated pressures and is virtually 100 percent monitored in a fail-to-safe configuration, the petitioner recognizes that there is a possibility that some componentry or instrumentation may be exposed to a potentially flammable or explosive level of hydrocarbon(s). For that reason, all of the components and systems that are being used in areas that could possibly be hydrocarbon contaminated have some measure of explosion protection. Because the facility is regulated by MSHA, a great deal of effort was expended to secure electrical components that have been certified as ''permissible'' or ''explosion proof'' by MSHA. However, after extensive effort, with respect to a number of critical components, the petitioner has been unable to locate any of those critical components that have been certified as permissible. Where permissible componentry is unavailable or unsuitable, the design has called for equipment that is rated for use in either Class I Division 1 or Class I Division 2 pursuant to Article 500.5 of the NEC depending on the potential exposure of the particular componentry to ignitable or explosive atmospheres.

The petitioner recognizes that there may be some componentry which may be suitable for classification for use in Class I Division 1 or Class I Division 2 locations, but which do not meet the precise requirements to be certified as permissible and vice versa. However, the petitioner also recognizes that the ''permissible'' designation takes into account the dynamic and largely non-engineered environment encountered in typical mining operations while the NEC Class I Division 1 and 2 designations refer to primarily static, engineered environments.

Although regulated by MSHA, the underground environment at the Fredonia Project is more akin to the environments envisioned by the NEC classification than those envisioned by the MSHA permissibility certification requirements. If granted, the petition would allow the petitioner to use permissible equipment, where available, and equipment classified for use in either NEC Class I Division 1 or 2 environments, as appropriate.

I. Complying with the permissibility standards would subject miners to greater hazards than they are subjected to under current Wilson County conditions. Although the cited standard may not apply in this instance, but in the event that it did, requiring the petitioner to comply would subject miners to greater hazards than they would be subject to using the systems proposed by Wilson County. To the extent that permissible equipment is available, the electrical equipment specified by the petitioner for the Project is explosion proof, rated at either Class I Division 1 or Class I Division 2, as appropriate to its location. This design provides a greater level of protection from explosion than would permissible equipment, and also enables a far safer work environment based on all of the equipment's inherent advantages over similar equipment that has been certified permissible by MSHA. The petitioner states that the use of explosion proof, but not permissible equipment creates a much safer environment all around through the number of mechanisms.

The primary advantage presented by the equipment sought to be used is that it will allow for more precise measurement of potentially hazardous conditions through remote monitoring and greater automation of the operation. Use of the specified equipment (for which a permissible equivalent is generally unavailable) will allow remote operation and monitoring of the operation, along with facilitating the ''fail-to-safe'' design of the operating circuitry. The primary reason for this is that the transmission components of the monitoring systems available in Class I Division 1 and Class I Division 2 compliant versions are not available in a permissible version in some instances. What this means is that, while the permissible equipment may be able to provide the necessary data, it cannot necessarily transmit the data either to a remote (in this case surface) location or locations nor can it communicate with a programmable logical control system which runs the ''fail-to-safe'' logic. On the other hand, the equipment currently specified for use at the Project can do all of that.

This enhanced transmission capability creates two significant safety advantages for the Project. First, it drastically lowers the number of miners who are needed underground at any given time. Absent the ability to transmit the monitored data to a remote location, miners would need to be physically underground to check readings and make determinations as to potential problems. With the pumping systems, for example, this could be as basic as periodically checking sight glasses to ensure that the pumps are functioning properly. With other systems it could involve physically reading digital or analog meters to make similar determinations. Little, if any, of this type of effort is necessary if the specified explosion proof, but not permissible, equipment is used.

Lowering the number of miners underground reduces the potential for exposure to flammable vapors and, in turn, increases safety overall by

removing the miners from proximity to the potential hazard. In doing so, the proposed equipment actually increases the number of people able to monitor data and respond to potential upset conditions. As currently configured, the system would allow remote monitoring of data not only at a central location at the surface, but also to other authorized users. Any alarms or warnings that might be sent by the system are heard and seen by every person necessary to respond almost regardless of when it occurs or where they might be. Thus, decisions that might end up saving lives could be made in essentially real time, rather than being delayed by having to be relayed by telephone. Second, the ''fail-to-safe'' system would operate without the need for human intervention or judgment. When any metric being monitored detected above or below a pre-set level, the system automatically initiates an orderly shut-down or power-down of specified equipment or, depending on the condition detected, a set of actions intended to reduce the hazard. For example, the permissibility rules dictate that certain changes must be made to ventilation when methane levels rise to 0.25 percent. Were the monitoring equipment used in the Project set to 0.10 percent, the system could automatically trigger an increase in ventilation which might prevent methane from reaching levels at which the regulations would require a change, thus reducing the level of potential methane exposure to a level well below the level which the regulations would require. The end result is that fewer miners are exposed to potential hazards. This also allows personnel to focus on other areas of concern such as evacuation procedures and other areas of importance.

II. The proposed action by the petitioner would provide no lesser degree of safety than application of the permissibility standards. Another basis for permitting modification of the cited standard's application is that the petitioner's proposed alternative equipment provides at least the same measure of safety contemplated by the permissibility standards.

The explosion proof but not permissible equipment to be utilized in the Fredonia Project is much more scalable than their permissible counterparts. For instance, available permissible LEL monitors are triggered at 0.25 percent methane, the level at which regulatory action is required, and are not sensitive to levels below that. The explosion proof, but not permissible monitors specified for the project, however, can be set to levels much lower than 0.25 percent methane which will allow them to automatically trigger corrective measures before methane reaches a level at which such measures are required.

The petitioner has done extensive research and has taken great strides in ensuring that miners' safety is at the forefront of all decisions. For instance, not only does the selected equipment allow for early detection and warning of potentially hazardous conditions, but in the event of an emergency, the equipment can be automatically shut down through the use of remote monitoring. This is not possible with available MSHA permissible equipment. In fact, use of the explosion proof equipment would provide even greater protection than that required by the permissibility standard.

The measures and electrical equipment proposed by the petitioner, coupled with the ability to work in what is essentially a much safer environment, alleviates any potential hazards by providing a workplace with safeguards additional to those required by MSHA while avoiding the creation of hazards associated with non-explosion proof equipment.

The petitioner asserts that strict application of the existing standards would result in a diminution of safety to the miners involved with the Fredonia Project, while use of the proposed equipment would afford no less protection (in fact, greater protection) from explosion hazards than would the available permissible equipment.

Dated: September 25, 2014.

Sheila McConnell,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 2014–23299 Filed 9–30–14; 8:45 am]

BILLING CODE 4510–43–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 October 31, 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–2014–027–C.

Petitioner: Oak Grove Resources, LLC, 8360 Taylor's Ferry Road, Hueytown, Alabama 35023.

Mine: Oak Grove Mine, MSHA I.D. No. 01–00851, located in Jefferson County, Alabama.

Regulation Affected: 30 CFR 75.364(b)(2) (Weekly examination).

Modification Request: The petitioner requests a modification of the existing standard because multiple roof falls have blocked travel in the Main North 2 left side returns at survey spad 28+92 for approximately one crosscut, making it unsafe for mine examiners to travel in the area. The deteriorated roof has essentially rendered the roof falls impractical to rehabilitate. The proposed alternative method of having a certified person take air quantity and quality measurements at monitoring stations MS–C and MS–D at both sides of the roof falls will provide the same measure of protection as the standard. The petitioner proposes the following additional terms and conditions:

(1) Two monitoring stations (MS–C and MS–D) will be provided to allow effective evaluation of airflow through the air split to ventilate the Main North 2 left side return air courses near the inaccessible roof falls. Monitoring station MS–C will monitor the air inby the roof fall, and monitoring station MS–D will monitor the air outby the roof fall.

(2) Signs showing the safe travel route to each monitoring station will be posted in an adjacent travel entry. The monitoring stations and routes of travel to the monitoring stations will be kept free of water accumulations.

(3) A certified person will conduct weekly evaluations at each of the monitoring stations. The evaluations will include the quantity and quality of the air entering or exiting the monitoring stations. The evaluation will also include a determination of any airflow from adjacent entries, defined and measured as stated in paragraph 8 below. These measurements will be made using MSHA-approved and calibrated hand-held multi-gas detectors to check the methane and oxygen gas concentrations, and calibrated anemometers to check airflow volume.

(4) A diagram showing the normal direction of the airflow will be posted at the monitoring stations. The diagram will be maintained in legible condition and any change in airflow direction will be reported to the mine foreman for immediate investigation.

(5) A date board will be provided at each monitoring station where the date, time, and examiner's initials will be recorded along with the measured quantity and quality of the air. Results of the examinations, including the condition of the accessible permanent ventilation controls creating the air course, will be recorded in a book kept on the surface and made accessible to all interested parties.

(6) All monitoring stations and approaches to monitoring stations will be maintained in a safe condition at all times. The roof will be adequately supported by roof bolts or other suitable means to prevent deterioration of the roof in the vicinity of the stations.

(7) Methane gas or other harmful, noxious, or poisonous gases will not be permitted to accumulate in excess of legal limits for return air. An increase of 0.5 percent methane above the last previous methane measurement or a 10 percent change in airflow quantity will cause an immediate investigation of the affected area. The results of the investigation will be immediately reported to the mine foreman.

(8) The initial airflow from adjacent air courses will be determined during the first evaluation following implementation of this modification. Airflow from adjacent air courses is defined as the difference between the air quantity entering and exiting the petitioned area, measured at the monitoring stations. A 10 percent change from the initial airflows in the air course will cause immediate examination and evaluation of the cause. Appropriate corrective action will then be taken. Following corrective action, a new ''initial airflow'' will be determined and serve as the basis for subsequent examinations.

(9) The monitoring station locations will be shown on the annually submitted mine ventilation map. The stations will not be moved to another location without prior approval by the District Manager (DM).

(10) Prior to implementation of this modification, all personnel will be instructed not to travel in the petitioned area, except along designated routes. All approaches will be fenced off or barricaded with ''DO NOT ENTER'' warning signs. Entrance into the area will be permitted only to conduct investigations and to correct problems with airflow detected through the monitoring process and all such work will be done under the supervision of an authorized person. All persons who work in the area will be instructed in the emergency evacuation procedures and all provisions of 30 CFR 75.1502 and 30 CFR 75.383.

(11) Within 60 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions for its approved Part 48 training plan to the District Manager. The proposed revisions will include initial and refresher training regarding the PDO.

(12) Use of this system would prevent exposure of miners to unnecessary hazards, thereby increasing the measure of protection to the miners.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection to all miners as would be provided by the existing standard.

Docket Number: M–2014–028–C.

Petitioner: Bridger Coal Company, 1088 Nine Mile Road, Point of Rocks, Wyoming 82942–0068.

Mine: Bridger Underground Mine, MSHA I.D. No. 48–01646, located in Sweetwater County, Wyoming.

Regulation Affected: 30 CFR 75.350(a) (Belt air course ventilation).

Modification Request: The petitioner requests a modification of the existing standard to permit the belt air course to be used as a return air course, and for the belt entry to be used to ventilate the longwall working section.

The petitioner states that:

(1) Due to the weak nature of the seam strata at Bridger Underground Mine, reduced exposure to weak roof rocks and increased stability of the ribs and gate pillars is important.

(2) A two-entry longwall development mining system reduces exposure to the soft tertiary strata, roof falls, rib instability and other hazards related to mining under these conditions.

(3) The two-entry system greatly reduces the number of four-way intersections, a definite plus regarding ground control. Therefore, developing additional entries to comply with isolation of the belt entry from a separate return entry and diverting belt air directly into a return air course diminishes the safety of the miners, as compared to utilizing the belt entry as a return air course during development mining.

(4) The use of the belt entry to aid in the ventilation of the working section will help dilute and render harmless methane gas that is released in the mine atmosphere during the mining cycle.

The petitioner proposes to use the following requirements for two-entry development, longwall installation and recovery, and retreat mining systems:

(1) An atmospheric monitoring system (AMS) for early warning fire detection will be used throughout the two-entry system. All sensors that are part of the AMS will be diesel-discriminating (carbon monoxide and nitric oxide) sensors.

(2) The belt air course will be separated with permanent ventilation

controls from return air courses and from other intake air courses except as provided within this petition. The belt air course is defined as the entry in which a belt is located and any adjacent entries not separated from the belt entry by permanent ventilation controls, including any entries in series with the belt entry, terminating at a return regulator, a section loading point, or the surface.

(3) The maximum air velocity in the belt entry will be no greater than 500 feet per minute, unless otherwise approved in the mine ventilation plan.

(4) The air velocities will be compatible with all fire detection systems and fire suppression systems used in the belt entry.

(5) The belt entry, the primary escapeway, and other intake entries if used, will be equipped with AMS that is installed, operated, examined and maintained as specified in this petition.

(6) Prior to the development of any portion of the two-entry mining system, all miners will receive annual training in the basic operating principles of the AMS, that will include actions required in the event of activation of any AMS alert or alarm signal. This training will be conducted as part of a miner's new miner training, experienced miner training, or annual refresher training.

(7) Mantrip cars, personnel carriers, or other transportation equipment will be maintained on or near the working section and on or near areas where mechanized mining equipment is being installed or removed, and will be of sufficient capacity to transport all persons who may be in the area, and will be located within 500 feet of the section loading point or proposed section loading point.

(8) Fire doors designed to quickly isolate the working section will be constructed in the two entries for use in emergency situations. The fire doors will be operable throughout the duration of the two-entry panel. A plan for the emergency closing of the fire doors, notification of personnel, and deenergization of electric power inby the doors, will be included in the 30 CFR 75.1502 mine emergency evacuation and firefighting program of instruction plan.

(9) Two separate lines or systems for voice communication will be maintained in the two-entry mining section. Phones will be installed every 1,000 feet within one crosscut of the location of the diesel-discriminating sensor in the belt and intake entries. The two systems will not be routed through the same entry. The methods of communications will be subject to approval of the DM. In addition, the underground personnel communication system (radio) will be used as a communication link between the AMS operator and the designated person on each working section, all diesel equipment operators on each panel, and any person investigating an alert condition.

(10) Communication and tracking systems will be installed and maintained according to the approved Emergency Response Plan (ERP), and will be subject to approval by the DM. Each individual located inby the mouth of the two-entry panel will carry a means of two-way communication.

(11) In addition to the requirements of 30 CFR 75.1100–2(b), fire hose outlets with valves every 300 feet will be installed along the intake entry. At least 500 feet of fire hose with fittings and nozzles suitable for connection with the outlets will be stored at each strategic location along the intake entry. The locations will be specified in the mine emergency evacuation and firefighting program of instruction plan.

(12) Compressor stations and unattended portable compressors will not be located in the two-entry panel.

The petitioner proposes to use the following additional requirements for two-entry panel development:

(1) Diesel-discriminating sensors will be installed in the belt conveyor entry within 25 feet inby and outby the crosscut where return air is directed out of the belt conveyor entry.

(2) A mechanical rock-dusting machine or the discharge hose of a mechanical rock-dusting machine will be installed in the belt conveyor entry near the section loading point of each two-entry development section. The mechanical rock-dusting machines will be operated continuously when coal is being produced to render the float coal dust inert in these entries, except when miners are performing maintenance, inspections, or other required work in these areas.

(3) A methane monitoring system utilizing methane sensors will be incorporated into the AMS and be installed to monitor the air in each belt haulage entry. The sensors will be located so that the belt air is monitored near the mouth of the development, near the tailpiece of the belt conveyor, and at or near any secondary belt drive unit installed in the belt haulage entry.

(4) The methane monitoring system will provide both audible and visual signals on both the working section and at a manned location on the surface of the mine where personnel will have two-way communications with all working sections, and will be on duty at all times when miners are underground in a two-entry section or when a conveyor belt is operating in a two-entry section. The system will initiate alarm signals when the methane level is 1.0 volume per centum. The methane monitoring system will deenergize the belt conveyor drive units when the methane level is 1.0 volume per centum. Upon notification of the alarm the miners will deenergize all other equipment located on the section.

The petitioner proposes to use the following additional requirements for retreat mining of the panels and longwall installation and recovery:

(1) Two separate intake air courses within each longwall panel will be provided to each two-entry longwall. Both air courses may be located on the same side of the panel. The air will travel in a direction from the mouth of the panel toward the section.

(2) The average concentration of respirable dust in the belt air course when used as an intake air course will be maintained at or below 1.0 mg/m^3. A permanent designated area for dust measurements will be established at a point no greater than 50 feet upwind from the most outby open crosscut on the working section. The designated area will be specified and approved in the ventilation plan.

(3) Unless approved by the DM, no more than 50 percent of the total intake air delivered to the working section or to areas where mechanized mining equipment is being installed or removed can be supplied from the belt air course. The locations for measuring air quantities will be approved in the mine ventilation plan.

(4) Notwithstanding the provisions of 30 CFR 75.380(g), additional intake air may be added to the belt air course through a point feed regulator that is not located within a two-entry panel (i.e. main belt) to ventilate the working section(s). The location and use of any point feed will be approved in the mine ventilation plan.

(5) During longwall retreat mining, a mechanical rock-dusting machine or the discharge hose of a mechanical rock-dusting machine will be installed at or near the last tailgate shield. The rock-dusting machines will be operated continuously when coal is being produced to render float coal dust inert in these entries except when miners are performing maintenance, inspections, or other required work in these areas.

(6) When a hydraulic fluid pump station for the longwall support system is located in the two-entry system, it will be installed and maintained as follows:

(a) The pumps and electrical controls will be equipped with an automatic fire suppression system.

(b) Only MSHA-approved fire resistant hydraulic fluid of the ''high water content group'', such as lsosynth VX 110BF2 or similar, will be used.

(c) The pump station will be maintained within 1,500 feet of the longwall face.

(d) In addition to the concentrate contained as part of the hydraulic pump system, hydraulic concentrate stored in the two-entry system will be limited to 500 gallons.

(e) A diesel-discriminating sensor will be installed between 50 and 100 feet downwind of the hydraulic pump station. The sensor will be installed in a location that will detect carbon monoxide caused by a fire and that will minimize the possibility of damage by mobile equipment.

(f) Whenever the transformer supplying power to the hydraulic pumping station is located in the intake entry, the transformer will be:

(i) Maintained within 1,500 feet of the longwall face.

(ii) Provided with a diesel-discriminating sensor located on the inby side of the transformer in a location that will detect carbon monoxide caused by a fire and that will minimize the possibility of damage by mobile equipment.

(iii) Provided with an over-temperature device that will deenergize the pumping station when the temperature reaches 165 degrees Fahrenheit.

(g) Each hydraulic pump will be provided with an over-temperature device that will automatically deenergize the motor on which it is installed. Deenergization will take place at a temperature of not more than 210 degrees Fahrenheit. The over-temperature device will be installed to monitor the circulating oil for the pump or on the external pump case housing.

(h) MSHA will be informed prior to the initial startup of the pumping system so that an inspection by MSHA can be conducted.

The petitioner proposes to use the following requirements for two-entry development, longwall installation and recovery, and retreat mining systems when diesel-powered equipment is operated on a two-entry system:

(1) The following administrative controls will be used:

(a) The number and type of pieces of diesel equipment in two-entry system will be minimized. A list of diesel equipment and their associated air quantity requirements will be provided at the designated surface location for use by the Atmospheric Monitoring System (AMS) operator. A whiteboard or similar method will be used by the AMS operator to keep a total of the air requirements of all diesel equipment operating in the two-entry system.

(b) The AMS operator will prohibit diesel equipment from entering the two-entry system when the total air required by all operating diesel equipment within the two-entry system exceeds the air quantity measure in the intake diesel roadway.

(c) The intake diesel roadway air quantity will be measured within three crosscuts outby the section loading point and will be included in all preshift examinations. Prior to entering or leaving a two-entry section, all diesel equipment operators will report to the designated AMS operator.

(2) Except ambulances used for emergencies only, all diesel powered equipment not approved and maintained under 30 CFR Part 36 operated on any two-entry system will include the following, maintained in operating condition:

(a) An automatic and manually activated fire suppression system meeting the requirements of 30 CFR 75.1911. The manual fire suppression system will be capable of being activated from both inside and outside the machine's cab. The manual actuator located outside the cab will be on the side of the machine opposite the operator.

(b) An automatic engine shut down/fuel shut-off system, tied into the activation of the fire suppression system that will be maintained in operating condition.

(c) An automatic closing heat-activated shut-off valve on diesel fuel lines either located between the fuel injection pump and fuel tank if the fuel lines are constructed of steel or located as close as practical to the fuel tank.

(d) A means to prevent the spray from ruptured diesel fuel, hydraulic oil, or lubricating oil lines from being ignited by contact with engine exhaust system component surfaces such as shielding, conduit, non-absorbent insulating materials, isolating compartments, etc.

(e) A means to maintain the surface temperature of the exhaust system of diesel equipment below 302 degrees Fahrenheit for diesel equipment classified as ''heavy-duty'' and that may be classified as light-duty but capable of performing work as heavy-duty equipment under 30 CFR 75.1908(a).

(f) A sensor to monitor the temperature and provide visual warning of an overheated cylinder head on air-cooled engines.

(3) A diesel-powered rock dust machine and diesel-powered generator, which are not approved and maintained under Part 36 or Part 7, can be used in the two-entry system, except where permissible equipment is required, provided no one is inby the work area.

(4) Diesel fuel will not be stored in the two-entry system and diesel-powered equipment not approved and maintained under Part 36, will not be refueled in the two-entry system.

(5) Diesel equipment will not be used for face haulage equipment on the working section, but may be used on the working section for cleanup, setup, and recovery or similar non-coal haulage purposes.

(6) If non-Part 36 diesel-equipment needs to be jump-started due to a dead battery in any two-entry system, a methane check will be made by a qualified person using an MSHA-approved detector prior to attaching the jumper cables. The equipment will not be jump-started if the air contains 1.0 volume per centum or more of methane.

(7) The operator will adopt and comply with a diesel equipment maintenance program. The program will include the examinations and tests specified in the manufacturer's maintenance recommendations as they pertain to diesel carbon monoxide emissions. A record of these examinations and tests will be maintained on the surface and made available to all interested persons.

In addition to the terms and conditions contained in this petition, the Atmospheric Monitoring System will be installed, operated, examined, and maintained and training will be conducted according to the provisions in 30 CFR 75.350, 75.351, and 75.352.

Prior to implementation of this petition, an inspection will be conducted by MSHA to ensure that the petitioner has complied with all of the terms and conditions of the petition. The petitioner will provide an approved Part 48 training plan that complies with all of the conditions specified in this petition. The following training will be provided:

(1) Equipment operators will be trained on using the fire suppression systems on diesel-equipment in the two-entry system.

(2) Miners will be trained on working on or maintaining the hydraulic pumping station when the hydraulic pumping station for the longwall supports is located in the two-entry system.

(3) Miners will be trained on emergency closing of fire doors, permanent ventilation control devices, notification of personnel, and

deenergization of electric power within the longwall district.

(4) Miners will be trained on mine emergency evacuation and firefighting program instructions, the approved SCSR storage plan, the approved ventilation plan, and the approved emergency response plan.

The petitioner states that the terms and conditions of this petition will not apply during the time period from completion of the development mining of the two-entry longwall panel until the beginning of the longwall equipment setup activities, provided that the conveyor belt in the two-entry panel is not energized. During this time period all other mandatory standards will apply.

The petitioner asserts that application of the existing standard will result in a diminution of safety to the miners and that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Dated: September 25, 2014.

Sheila McConnell,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 2014–23298 Filed 9–30–14; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Notice of Availability of Calendar Year 2015 Competitive Grant Funds.

AGENCY: Legal Services Corporation.

ACTION: Solicitation for Proposals for the Provision of Civil Legal Services.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering federal funds provided for civil legal services to low-income people.

LSC hereby announces that it is reopening the competitive bidding process for FY 2015 funding for service area NJ–12 in New Jersey. Service area NJ–12 is comprised of Ocean and Monmouth Counties in New Jersey. LSC is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to the eligible client population in service area NJ–12 in New Jersey.

The exact amount of congressionally appropriated funds and the date and terms of availability for calendar year 2015 are not known, although it is anticipated that the funding amount will be similar to calendar year 2014 funding, which is $667,151.00.

DATES: See **SUPPLEMENTARY INFORMATION** section for grants competition dates.

ADDRESSES: Legal Services Corporation—Competitive Grants, 3333 K Street NW., Third Floor, Washington, DC 20007–3522.

FOR FURTHER INFORMATION CONTACT: the Office of Program Performance by email at *competition@lsc.gov,* or visit the grants competition Web site at *www.grants.lsc.gov.*

SUPPLEMENTARY INFORMATION: The Request for Proposals (RFP) is currently available at *www.grants.lsc.gov.* Applicants are required to use the ''Standard RFP Narrative Instruction'' to prepare the grant proposal. Applicants must file a Notice of Intent to Compete (NIC) to participate in the competitive grants process. Applicants must file the NIC by October 6, 2014, 5:00 p.m. E.T. Applicants must submit grant proposals by October 24, 2014, 5:00 p.m. E.T. The dates in this notice supersede the dates contained in the RFP.

LSC is seeking proposals from: (1) Non-profit organizations that have as a purpose the provision of legal assistance to eligible clients; (2) private attorneys; (3) groups of private attorneys or law firms; (4) state or local governments; and (5) sub-state regional planning and coordination agencies that are composed of sub-state areas and whose governing boards are controlled by locally elected officials.

The RFP, containing the NIC and grant application, guidelines, proposal content requirements, service area descriptions, and specific selection criteria, is available from *www.grants.lsc.gov.*

LSC will post all updates and/or changes to this notice at *www.grants.lsc.gov.* Interested parties are asked to visit *www.grants.lsc.gov* regularly for updates on the LSC competitive grants process.

Dated: September 26, 2014.

Atitaya Rok,

Staff Attorney.

[FR Doc. 2014–23368 Filed 9–30–14; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Notice of Publication of Grant Assurances for LSC Grant Programs

AGENCY: Legal Services Corporation.

ACTION: Notice of publication of grant assurances for LSC grant programs.

SUMMARY: The Legal Services Corporation (''LSC'') is publishing grant assurances for the following LSC grant programs: 2014 Technology Initiative Grants commencing on or after October 1, 2014; 2014 Pro Bono Innovation Fund Grants commencing on or after October 1, 2014; and 2015 Basic Field Grants (including Basic Field—General, Basic Field—Migrant, and Basic Field—Native American) commencing on or after January 1, 2015. The grant assurances for each grant program delineate the responsibilities of the recipient pursuant to the provisions of the grant.

DATES: The grant assurances for each LSC grant program are effective upon commencement of the grant:

1. 2014 Technology Initiative Grants—commencing on or after October 1, 2014
2. 2014 Pro Bono Innovation Fund Grants—commencing on or after October 1, 2014
3. 2015 Basic Field Grants—commencing on or after January 1, 2015

ADDRESSES: Submit written questions or comments by mail, email, or fax to LSC Grant Assurances, Office of Program Performance, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007; *LSCGrantAssurances@lsc.gov;* or (202) 337–6813 (fax). Comments may also be submitted online at *http://www.lsc.gov/contact-us.*

FOR FURTHER INFORMATION CONTACT: Reginald J. Haley, Office of Program Performance, *haleyr@lsc.gov,* (202) 295–1545.

SUPPLEMENTARY INFORMATION: The purpose of the grant assurances for each LSC grant program is to delineate the responsibilities of the recipient pursuant to the provisions of the grant. As a grant making agency created by Congress, LSC has grant assurances that are intended to reiterate and/or clarify the responsibilities and obligations already applicable through existing law and regulations and/or obligate the recipient to comply with specific additional requirements in order to effectuate the purposes of the Legal Services Corporation Act, as amended, and other applicable law.

The 2014 Technology Initiative Grants (''TIG'') Grant Assurances are available at *http://tig.lsc.gov/grants/compliance.* They will apply to TIGs commencing on or after October 1, 2014.

The 2014 Pro Bono Innovation Fund Grants (''PBIF Grants'') Grant Assurances are available at *http://grants.lsc.gov/resources/reference-materials.* They will apply to PBIF Grants commencing on or after October 1, 2014.

The 2015 Basic Field Grant Assurances are available at *http://grants.lsc.gov/resources/reference-materials.* They will apply to Basic Field Grants (including Basic Field—

General, Basic Field—Migrant, and Basic Field—Native American) commencing on or after January 1, 2015.

Dated: September 25, 2014.

Atitaya Rok,

Staff Attorney.

[FR Doc. 2014–23277 Filed 9–30–14; 8:45 am]

BILLING CODE 7050–01–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 14–CRB–0007–CD (2010–2012)]

Distribution of the 2012 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges are soliciting comments on a motion of Phase I claimants for partial distribution in connection with the 2012 cable royalty funds. The Judges are also requesting comments as to the existence of Phase I and Phase II controversies with respect to the distribution of 2012 cable royalty funds.

DATES: Comments are due on or before October 31, 2014.

ADDRESSES: Comments may be sent electronically to *crb@loc.gov.* In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000. If delivered by a commercial courier, comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Lakeshia Keys, Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: Each year cable systems must submit royalty payments to the Register of Copyrights as required by the statutory license set forth in section 111 of the Copyright Act for the retransmission to cable subscribers of over-the-air television and radio broadcast signals. *See* 17 U.S.C. 111(d). These royalties are then distributed to copyright owners whose works were included in a qualifying transmission and who timely filed a claim for royalties. Allocation of the royalties collected occurs in one of two ways. In the first instance, these funds will be distributed through a negotiated settlement among the parties. 17 U.S.C. 111(d)(4)(A). If the claimants do not reach an agreement with respect to the royalties, the Copyright Royalty Judges (''Judges'') must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 111(d)(4)(B).

On July 25, 2014, representatives of the Phase I claimant categories (the ''Phase I Parties'') [1] filed with the Judges a motion requesting a partial distribution of 60% (as opposed to 50% as requested in recent cases) of the 2012 cable royalty funds pursuant to Section 801(b)(3)(C) of the Copyright Act. 17 U.S.C. 801(b)(3)(C). Under that section of the Copyright Act, before ruling on a partial distribution motion the Judges must publish a notice in the **Federal Register** seeking responses to the motion to ascertain whether any claimant entitled to receive such royalty fees has a reasonable objection to the proposed distribution. On September 12, 2014, the Phase I Parties filed a motion for expedited resolution of the pending motion. Consequently, this Notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of 60% of the 2012 cable royalty funds to the Phase I Parties. The Judges must be advised of the existence and extent of all such objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution motion that come to their attention after the close of that period.

The Judges also seek comment on the existence and extent of any controversies to the 2012 cable royalty funds at Phase I or Phase II with respect to those funds that would remain if the partial distribution were granted.

The Motion of Phase I Claimants for Partial Distribution and the Joint Motion of Phase I Claimants for Expedited Resolution of Pending Motion for Partial Distribution are posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb.*

Dated: September 23, 2014.

Suzanne Barnett,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2014–23361 Filed 9–30–14; 8:45 am]

BILLING CODE 1410–72–P

[1] The ''Phase I Parties'' are the Program Suppliers, Joint Sports Claimants, Public Television Claimants, Commercial Television Claimants (represented by National Association of Broadcasters), Music Claimants (represented by American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.), Canadian Claimants Group, National Public Radio, and Devotional Claimants. In Phase I of a cable royalty distribution proceeding, royalties are allocated among certain categories of broadcast programming that have been retransmitted by cable systems. The categories have traditionally been movies and syndicated television series, sports programming, commercial and noncommercial broadcaster-owned programming, religious programming, music, public radio programming, and Canadian programming. In Phase II of a cable royalty distribution proceeding, royalties are allocated among claimants within each of the Phase I categories.

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 14–CRB–0008–SD (2010–2012)]

Distribution of 2012 Satellite Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges are soliciting comments on a motion of Phase I claimants for partial distribution in connection with the 2012 satellite royalty funds. The Judges are also requesting comments as to the existence of Phase I and Phase II controversies with respect to the distribution of 2012 satellite royalty funds.

DATES: Comments are due on or before October 31, 2014.

ADDRESSES: Comments may be sent electronically to *crb@loc.gov.* In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000. If delivered by a commercial courier, comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D

Street NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Lakeshia Keys, Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: Each year satellite systems must submit royalty payments to the Register of Copyrights as required by the statutory license set forth in section 119 of the Copyright Act for the retransmission to satellite subscribers of over-the-air television broadcast signals. *See* 17 U.S.C. 119(b). These royalties are then distributed to copyright owners whose works were included in a qualifying transmission and who timely filed a claim for royalties. Allocation of the royalties collected occurs in one of two ways. In the first instance, these funds will be distributed through a negotiated settlement among the parties. 17 U.S.C. 119(b)(5)(A). If the claimants do not reach an agreement with respect to the royalties, the Copyright Royalty Judges (''Judges'') must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 119(b)(5)(B).

On July 25, 2014, representatives of the Phase I claimant categories (the ''Phase I Claimants'') [1] filed with the Judges a motion requesting a partial distribution of 60% (as opposed to 50% as requested in recent cases) of the 2012 satellite royalty funds pursuant to section 801(b)(3)(C) of the Copyright Act. 17 U.S.C. 801(b)(3)(C). That section requires that the Judges publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any claimant entitled to receive such fees has a reasonable objection to the requested distribution before ruling on the motion. On September 12, 2014, the Phase I Parties filed a motion for expedited resolution of the pending motion. Consequently, this Notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of 60% of the 2012 satellite royalty funds to the Phase I Claimants. The Judges must be advised of the existence and extent of all such objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution motion that come to their attention after the close of that period.

The Judges also seek comment on the existence and extent of any controversies to the 2012 satellite royalty funds at Phase I or Phase II with respect to those funds that would remain if the motion for partial distribution is granted.

The Motion of the Phase I Claimants for Partial Distribution and the Joint Motion of Phase I Claimants for Expedited Resolution of Pending Motion for Partial Distribution are posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb.*

Dated: September 23, 2014.

Suzanne M. Barnett,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2014–23362 Filed 9–30–14; 8:45 am]

BILLING CODE 1410–72–P

[1] The ''Phase I Claimants'' are Program Suppliers, Joint Sports Claimants, Broadcaster Claimants Group, Music Claimants (represented by American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.), and Devotional Claimants. In Phase I of a satellite royalty distribution proceeding, royalties are allocated among certain categories of broadcast programming that have been retransmitted by satellite systems. The categories have traditionally been movies and syndicated television series, sports programming, commercial broadcaster-owned programming, religious programming, and music. Public Television Claimants, Canadian Claimants, and National Public Radio, which traditionally have received Phase I shares of cable royalties, do not claim Phase I shares of the satellite royalty funds. In Phase II of a satellite royalty distribution proceeding, royalties are allocated among claimants within each of the Phase I categories.

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Mathematical and Physical Sciences (#66).

Date/Time: November 3–4, 2014: 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1235, Arlington, Virginia 22230.

To help facilitate your entry into the building, contact Caleb Autrey (*cautrey@nsf.gov*). Your request should be received on or prior to October 27, 2014.

Type of Meeting: Open, in person.

Contact Person: Eduardo Misawa and Caleb Autrey, National Science Foundation, 4201 Wilson Boulevard, Suite 1005, Arlington, Virginia 22230, 703–292–5353 and 5137, respectively.

Minutes: Meeting minutes and other information may be obtained from the Staff Associate and MPSAC Designated Federal Officer at the above address or the Web site at *http://www.nsf.gov/mps/advisory.jsp.*

Purpose of Meeting: To study data, programs, policies, and other information pertinent to the National Science Foundation and to provide advice and recommendations concerning research in mathematics and physical sciences.

Agenda

- State of the Directorate for Mathematical and Physical Sciences (MPS): Challenges and Opportunities
- Reports from current subcommittees

Dated: September 25, 2014.

Suzanne Plimpton,

Acting, Committee Management Officer.

[FR Doc. 2014–23274 Filed 9–30–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted by the U.S. Nuclear Regulatory Commission's (NRC's) Advisory Committee on Reactor Safeguards (ACRS) pursuant to the Federal Advisory Committee Act (FACA). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACRS is a statutory group established by Congress to review and report on nuclear safety matters and applications for the licensing of nuclear facilities. The Committee's reports become a part of the public record.

The ACRS meetings are conducted in accordance with FACA; they are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those related to radiological safety.

The ACRS meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process.

General Rules Regarding ACRS Full Committee Meetings

An agenda will be published in the **Federal Register** for each full Committee meeting. There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a

manner that, in his/her judgment will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day on another day of the same meeting. Persons planning to attend the meeting may contact the Designated Federal Officer (DFO) specified in the **Federal Register** Notice prior to the meeting to be advised of any changes to the agenda that may have occurred.

The following requirements shall apply to public participation in ACRS full Committee meetings:

(a) Persons who plan to submit written comments at the meeting should provide 35 copies to the DFO at the beginning of the meeting. Persons who cannot attend the meeting, but wish to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the DFO specified in the **Federal Register** Notice, care of the Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments should be limited to items being considered by the Committee. Comments should be in the possession of the DFO five days prior to the meeting to allow time for reproduction and distribution.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the DFO; if possible, the request should be made five days before the meeting, identifying the topic(s) on which oral statements will be made and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the DFO.

(d) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the use of such equipment will not interfere with the conduct of the meeting. The DFO will have to be notified prior to the meeting and will authorize the use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(e) A transcript will be kept for certain open portions of the meeting and will be available in the NRC Public Document Room (PDR), One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, Maryland 20852–2738. A copy of the certified minutes of the meeting will be available at the same location three months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges. ACRS meeting agenda, transcripts, and letter reports are available through the PDR at *pdr@nrc.gov,* by calling the PDR at 1–800–394–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/agendas/.*

(f) Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Specialist, (301–415–8066) between 7:30 a.m. and 3:45 p.m. Eastern Time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

ACRS Subcommittee Meetings

In accordance with the revised FACA, the agency is no longer required to apply the FACA requirements to meetings conducted by the Subcommittees of the NRC Advisory Committees, if the Subcommittee's recommendations would be independently reviewed by its parent Committee.

The ACRS, however, chose to conduct its Subcommittee meetings in accordance with the procedures noted above for ACRS full Committee meetings, as appropriate, to facilitate public participation, and to provide a forum for stakeholders to express their views on regulatory matters being considered by the ACRS. When Subcommittee meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 50 copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The DFO should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the DFO prior to the beginning of the meeting for admittance to the closed session.

Dated: September 24, 2014.

Annette L. Vietti-Cook,

Advisory Committee Management Officer.

[FR Doc. 2014–23431 Filed 9–30–14; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Standard Form 1153: Claim for Unpaid Compensation of Deceased Civilian Employee

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: Merit System Accountability and Compliance, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an existing information collection request (ICR) 3206–0234, Standard Form 1153, Claim for Unpaid Compensation of Deceased Civilian Employee. 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 December 1, 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 Merit System Accountability and Compliance, Office of Personnel Management, 1900 E. Street NW., Washington, DC 20415, Attention: Robert D. Hendler or sent via electronic mail to *robert.hendler@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Merit System Accountability and Compliance, Office of Personnel Management, 1900 E. Street NW., Washington, DC 20503, Attention: Robert D. Hendler or sent via electronic mail to *robert.hendler@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.

Standard Form 1153, Claim for Unpaid Compensation of Deceased Civilian Employee, is used to collect information from individuals who have been designated as beneficiaries of the unpaid compensation of a deceased Federal civilian employee or believe their relationship to the deceased entitles them to receive the unpaid compensation of the deceased Federal civilian employee. OPM needs this information to adjudicate the claim and properly assign the unpaid compensation of the deceased Federal civilian employee to the appropriate individual(s).

Analysis

Agency: Merit System Accountability and Compliance, Office of Personnel Management.

Title: Standard Form 1153, Claim for Unpaid Compensation of Deceased Civilian Employee.

OMB Number: 3260–0234.

Frequency: Annually.

Affected Public: Individuals.

Number of Respondents: 4,400.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 1,100 hours.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–23292 Filed 9–30–14; 8:45 am]

BILLING CODE 6325–58–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31264; File No. 812–14289]

Northern Trust Investments, Inc., et al.; Notice of Application

September 25, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

Summary of Application: Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; (f) certain series to perform creations and redemptions of Creation Units in-kind in a master-feeder structure; and (g) certain series to issue Shares in less than Creation Unit size to investors participating in a distribution reinvestment program (''Distribution Reinvestment Program'').

Applicants: Northern Trust Investments, Inc. (''Initial Adviser''), FlexShares Trust (''Trust''), and Foreside Fund Services, LLC (''Foreside'').

Filing Dates: The application was filed on March 13, 2014 and amended on July 23, 2014.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 20, 2014, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: the Initial Adviser and the Trust, 50 South LaSalle Street, Chicago, IL 60603; Foreside, 3 Canal Plaza, Suite 100, Portland, ME 04101.

FOR FURTHER INFORMATION CONTACT: Anil K. Abraham, Senior Special Counsel at (202) 551–2614, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is a statutory trust organized under the laws of Maryland. The Trust is registered with the Commission under the Act as an open-end management investment company with multiple series.

2. The Initial Adviser is an investment adviser registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') and is the investment adviser to the Funds (defined below). Any other Adviser (defined below) will also be registered as an investment adviser under the Advisers Act. The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Funds (each, a ''Sub-Adviser''). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. The Trust will enter into a distribution agreement with one or more distributors (each, a ''Distributor''). The distributor for the Current Funds (defined below) is Foreside. Each Distributor will be a broker-dealer (''Broker'') registered under the Securities Exchange Act of 1934 (''Exchange Act'') and will act as distributor and principal underwriter of one or more of the Funds. The Distributor of any Fund may be an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of that Fund's Adviser and/or Sub-Advisers. No Distributor will be affiliated with any Exchange (defined below).

4. Applicants request that the order apply to the existing series of the Trust described in the application (''Current Funds''), as well as any additional series of the Trust and other open-end management investment companies, or series thereof, that may be created in the future (''Future Funds''), each of which will operate as an exchange-traded fund (''ETF'') and will track a specified index comprised of domestic and/or foreign equity and/or fixed income securities (each, an ''Underlying Index''). Any Future Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application. The Current Funds and Future Funds, together, are the ''Funds.'' [1]

5. Applicants state that a Fund may operate as a feeder fund in a master-feeder structure (''Feeder Fund''). Applicants request that the order permit a Feeder Fund to acquire shares of another registered investment company in the same group of investment companies having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) of the Act and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B) of the Act (''Master-Feeder Relief''). Applicants may structure certain Feeder Funds to generate economies of scale and incur lower overhead costs.[2] There would be no ability by Fund shareholders to exchange Shares of Feeder Funds for shares of another feeder series of the Master Fund.

6. Each Fund, or its respective Master Fund, will hold certain securities, currencies, other assets and other investment positions (''Portfolio Holdings'') selected to correspond generally to the performance of its Underlying Index. Certain of the Funds will be based on Underlying Indexes that will be comprised solely of equity and/or fixed income securities issued by one or more of the following categories of issuers: (i) Domestic issuers and (ii) non-domestic issuers meeting the requirements for trading in U.S. markets. Other Funds will be based on Underlying Indexes that will be comprised solely of foreign and domestic, or solely foreign, equity and/or fixed income securities (''Foreign Funds'').

7. Applicants represent that each Fund, or its respective Master Fund, will invest at least 80% of its assets (excluding securities lending collateral) in the component securities of its respective Underlying Index (''Component Securities'') and TBA Transactions [3], and in the case of Foreign Funds, Component Securities and Depositary Receipts [4] representing Component Securities. Each Fund, or its respective Master Fund, may also invest up to 20% of its assets in certain index futures, options, options on index futures, swap contracts or other derivatives, as related to its respective Underlying Index and its Component Securities, cash and cash equivalents, other investment companies, as well as in securities and other instruments not included in its Underlying Index but which the Adviser believes will help the Fund, or its respective Master Fund, track its Underlying Index. A Fund may also engage in short sales in accordance with its investment objective.

8. The Trust may issue Funds that seek to track Underlying Indexes constructed using 130/30 investment strategies (''130/30 Funds'') or other long/short investment strategies (''Long/Short Funds''). Each Long/Short Fund will establish (i) Exposures equal to approximately 100% of the long positions specified by the Long/Short Index [5] and (ii) exposures equal to approximately 100% of the short positions specified by the Long/Short Index. Each 130/30 Fund will include strategies that: (i) Establish long positions in securities so that total long exposure represents approximately 130% of a Fund's net assets; and (ii) simultaneously establish short positions in other securities so that total short exposure represents approximately 30% of such Fund's net assets. Each Business Day, for each Long/Short Fund and 130/30 Fund, the Adviser will provide full portfolio transparency on the Fund's publicly available Web site (''Web site'') by making available the Fund's, or its respective Master Fund's, Portfolio Holdings before the commencement of trading of Shares on the Listing Exchange (defined below).[6] The information provided on the Web site will be formatted to be reader-friendly.

9. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A

[1] All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the order. A Fund of Funds (defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[2] Operating in a master-feeder structure could also impose costs on a Feeder Fund and reduce its tax efficiency. The Feeder Fund's Board will consider any such potential disadvantages against the benefits of economies of scale and other benefits of operating within a master-feeder structure. In a master-feeder structure, the Master Fund—rather than the Feeder Fund—would generally invest its portfolio in compliance with the requested order.

[3] A ''to-be-announced transaction'' or ''TBA Transaction'' is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

[4] Depositary receipts representing foreign securities (''Depositary Receipts'') include American Depositary Receipts and Global Depositary Receipts. The Funds, or their respective Master Funds, may invest in Depositary Receipts representing foreign securities in which they seek to invest. Depositary Receipts are typically issued by a financial institution (a ''depositary bank'') and evidence ownership interests in a security or a pool of securities that have been deposited with the depositary bank. A Fund, or its respective Master Fund, will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated person of a Fund, the Adviser or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Fund, or its respective Master Fund.

[5] Underlying Indexes that include both long and short positions in securities are referred to as ''Long/Short Indexes.''

[6] Under accounting procedures followed by each 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 Funds 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.

Fund using a replication strategy will invest in the Component Securities of its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all of the Component Securities of its Underlying Index. Applicants state that a Fund using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5%.

10. Each Fund will be entitled to use its Underlying Index pursuant to either a licensing agreement with the entity that compiles, creates, sponsors or maintains the Underlying Index (each, an ''Index Provider'') or a sub-licensing arrangement with the Adviser, which will have a licensing agreement with such Index Provider.[7] A ''Self-Indexing Fund'' is a Fund for which an Affiliated Person, or a Second-Tier Affiliate, of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor (each, an ''Affiliated Index Provider'') will serve as the Index Provider. In the case of Self-Indexing Funds, an Affiliated Index Provider will create a proprietary, rules-based methodology to create Underlying Indexes (each an ''Affiliated Index'').[8] Except with respect to the Self-Indexing Funds, no Index Provider is or will be an Affiliated Person, or a Second-Tier Affiliate, of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor.

11. Applicants recognize that Self-Indexing Funds could raise concerns regarding the ability of the Affiliated Index Provider to manipulate the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the Affiliated Index Provider who have knowledge of changes to an Underlying Index prior to the time that information is publicly disseminated. Prior orders granted to self-indexing ETFs (''Prior Self-Indexing Orders'') addressed these concerns by creating a framework that required: (i) Transparency of the Underlying Indexes; (ii) the adoption of policies and procedures not otherwise required by the Act designed to mitigate such conflicts of interest; (iii) limitations on the ability to change the rules for index compilation and the component securities of the index; (iv) that the index provider enter into an agreement with an unaffiliated third party to act as ''Calculation Agent''; and (v) certain limitations designed to separate employees of the index provider, adviser and Calculation Agent (clauses (ii) through (v) are hereinafter referred to as ''Policies and Procedures'').[9]

12. Instead of adopting the same or similar Policies and Procedures, Applicants propose that each day that the NYSE and the national securities exchange (as defined in section 2(a)(26) of the Act) (an ''Exchange'') on which the Fund's Shares are primarily listed (''Listing Exchange'') are open for business, including any day that a Fund is required to be open under section 22(e) of the Act (a ''Business Day''), each Self-Indexing Fund will post on its Web site, before commencement of trading of Shares on the Listing Exchange, the identities and quantities of the Portfolio Holdings that will form the basis for the Fund's calculation of its NAV at the end of the Business Day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will provide an effective alternative mechanism for addressing any such potential conflicts of interest.

13. Applicants represent that each Self-Indexing Fund's Portfolio Holdings will be as transparent as the portfolio holdings of existing actively managed ETFs. Applicants observe that the framework set forth in the Prior Self-Indexing Orders was established before the Commission began issuing exemptive relief to allow the offering of actively-managed ETFs.[10] Unlike passively-managed ETFs, actively-managed ETFs do not seek to replicate the performance of a specified index but rather seek to achieve their investment objectives by using an ''active'' management strategy. Applicants contend that the structure of actively managed ETFs presents potential conflicts of interest that are the same as those presented by Self-Indexing Funds because the portfolio managers of an actively managed ETF by definition have advance knowledge of pending portfolio changes. However, rather than requiring Policies and Procedures similar to those required under the Prior Self-Indexing Orders, Applicants believe that actively managed ETFs address these potential conflicts of interest appropriately through full portfolio transparency, as the conditions to their relevant exemptive relief require.

14. In addition, Applicants do not believe the potential for conflicts of interest raised by the Adviser's use of the Underlying Indexes in connection with the management of the Self Indexing Funds and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.[11]

15. The Adviser and any Sub-Adviser has adopted or will adopt, pursuant to Rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder.

[7] The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider (or in case of a sub-licensing agreement, the Adviser) must provide the use of the Underlying Indexes and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

[8] The Affiliated Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be ''investment companies'' in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or subadviser (''Affiliated Accounts'') as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or subadviser (''Unaffiliated Accounts''). The Affiliated Accounts and the Unaffiliated Accounts, like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Indexes or a representative sample of such constituents of the Underlying Index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

[9] *See, e.g.,* In the Matter of WisdomTree Investments Inc., et al., Investment Company Act Release Nos. 27324 (May 18, 2006) (notice) and 27391 (June 12, 2006) (order); In the Matter of IndexIQ ETF Trust, et al., Investment Company Act Release Nos. 28638 (Feb. 27, 2009) (notice) and 28653 (March 20, 2009) (order); and Van Eck Associates Corporation, et al., et al., Investment Company Act Release Nos. 29455 (Oct. 1, 2010) (notice) and 29490 (Oct. 26, 2010) (order).

[10] *See, e.g.,* In the Matter of Huntington Asset Advisors, Inc., et al., Investment Company Act Release Nos. 30032 (April 10, 2012) (notice) and 30061 (May 8, 2012) (order); In the Matter of Russell Investment Management Co., et al., Investment Company Act Release Nos. 29655 (April 20, 2011) (notice) and 29671 (May 16, 2011) (order); In the Matter of Eaton Vance Management, et al., Investment Company Act Release Nos. 29591 (March 11, 2011) (notice) and 29620 (March 30, 2011) (order) and; In the Matter of iShares Trust, et al., Investment Company Act Release Nos. 29543 (Dec. 27, 2010) (notice) and 29571 (Jan. 24, 2011) (order).

[11] *See, e.g.,* Rule 17j–1 under the Act and Section 204A under the Advisers Act and Rules 204A–1 and 206(4)–7 under the Advisers Act.

These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, the Adviser has adopted policies and procedures as required under section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Exchange Act or the rules thereunder, of material non-public information by the Adviser or an associated person (''Inside Information Policy''). Any Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy. In accordance with the Code of Ethics [12] and Inside Information Policy of the Adviser and Sub-Advisers, personnel of those entities with knowledge about the composition of the Portfolio Deposit [13] will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, an Index Provider will not provide any information relating to changes to an Underlying Index's methodology for the inclusion of component securities, the inclusion or exclusion of specific component securities, or methodology for the calculation or the return of component securities, in advance of a public announcement of such changes by the Index Provider. The Adviser will also include under Item 10.C. of Part 2 of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

16. To the extent the Self-Indexing Funds transact with an Affiliated Person of the Adviser or Sub-Adviser, such transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In this regard, each Self-Indexing Fund's board of directors or trustees (''Board'') will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, the Adviser, Affiliated Persons of the Adviser (''Adviser Affiliates'') and Affiliated Persons of any Sub-Adviser (''Sub-Adviser Affiliates'') may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by the Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under the Act and any relevant guidelines from the staff of the Commission.

17. In light of the foregoing, Applicants believe it is appropriate to allow the Self-Indexing Funds to be fully transparent in lieu of Policies and Procedures from the Prior Self-Indexing Orders discussed above.

18. The Shares of each Fund will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[14] On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) [15] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots; [16] (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind [17] will be excluded from the Deposit Instruments and the Redemption Instruments; [18] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio; [19] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

19. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; [20] (d) if, on a given Business Day,

[12] The Adviser has also adopted or will adopt a code of ethics pursuant to Rule 17j–1 under the Act and Rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in Rule 17j–1) from engaging in any conduct prohibited in Rule 17j–1 (''Code of Ethics'').

[13] The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing are referred to as the ''Portfolio Deposit.''

[14] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A.

[15] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for the Business Day.

[16] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[17] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[18] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (as defined below).

[19] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants on a given Business Day.

[20] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders

the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the National Securities Clearing Corporation (''NSCC'') or The Depository Trust Company (''DTC''); or (ii) in the case of Foreign Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[21]

20. Creation Units will consist of specified large aggregations of Shares, e.g., at least 25,000 Shares, and it is expected that the initial price of a Creation Unit will range from $1 million to $10 million. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant'' which is either (1) a ''Participating Party,'' i.e., a broker-dealer or other participant in the Continuous Net Settlement System of the NSCC, a clearing agency registered with the Commission, or (2) a participant in the DTC (''DTC Participant''), which, in either case, has signed a participant agreement with the Distributor. The Distributor will be responsible for transmitting the orders to the Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order that is not submitted in proper form.

21. Each Business Day, before the open of trading on the Listing Exchange, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Deposit Instruments.

22. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the Fund's existing shareholders. Each Fund will impose purchase or redemption transaction fees (''Transaction Fees'') in connection with effecting such purchases or redemptions of Creation Units. With respect to Feeder Funds, the Transaction Fee would be paid indirectly to the Master Fund.[22] In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.[23] The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

23. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (each, a ''Market Maker'') and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

24. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[24] The price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

25. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund (other than pursuant to a Distribution Reinvestment Program), or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed through an Authorized Participant. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

26. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or a ''mutual fund.'' Instead, each such Fund will be marketed as an ''ETF.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may

that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

[21] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[22] Applicants are not requesting relief from section 18 of the Act. Accordingly, a Master Fund may require a Transaction Fee payment to cover expenses related to purchases or redemptions of the Master Fund's shares by a Feeder Fund only if it requires the same payment for equivalent purchases or redemptions by any other feeder fund. Thus, for example, a Master Fund may require payment of a Transaction Fee by a Feeder Fund for transactions for 20,000 or more shares so long as it requires payment of the same Transaction Fee by all feeder funds for transactions involving 20,000 or more shares.

[23] Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

[24] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

acquire those Shares from the Fund (other than pursuant to a Distribution Reinvestment Program) or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

27. The requested order would also permit the Funds to operate the ''Distribution Reinvestment Program,'' as described below. The Trust will make the DTC Dividend Reinvestment Service available for use by the beneficial owners of Shares (''Beneficial Owners'') through DTC Participants for reinvestment of their cash dividends.[25] DTC Participants whose customers participate in the program will have the distributions of their customers automatically reinvested in additional whole Shares issued by the applicable Fund at NAV per Share. Shares will be issued at NAV under the DTC Dividend Reinvestment Service regardless of whether the Shares are trading in the secondary market at a premium or discount to NAV as of the time NAV is calculated. Thus, Shares may be purchased through the DTC Dividend Reinvestment Service at prices that are higher (or lower) than the contemporaneous secondary market trading price. Applicants state that the DTC Dividend Reinvestment Service differs from dividend reinvestment services offered by broker-dealers in two ways. First, in dividend reinvestment programs typically offered by broker-dealers, the additional shares are purchased in the secondary market at current market prices at a date and time determined by the broker-dealer at its discretion. Shares purchased through the DTC Dividend Reinvestment Service are purchased directly from the fund on the date of the distribution at the NAV per share on such date. Second, in dividend reinvestment programs typically offered by broker-dealers, shareholders are typically charged a brokerage or other fee in connection with the secondary market purchase of shares. Applicants state that brokers typically do not charge customers any fees for reinvesting distributions through the DTC Dividend Reinvestment Service.

28. Applicants state that the DTC Dividend Reinvestment Service will be operated by DTC in exactly the same way it runs such service for other open-end management investment companies. The initial decision to participate in the DTC Dividend Reinvestment Service is made by the DTC Participant. Once a DTC Participant elects to participate in the DTC Dividend Reinvestment Service, it offers its customers the option to participate. Beneficial Owners will have to make an affirmative election to participate by completing an election notice. Before electing to participate, Beneficial Owners will receive disclosure describing the terms of the DTC Dividend Reinvestment Service and the consequences of participation. This disclosure will include a clear and concise explanation that under the Distribution Reinvestment Program, Shares will be issued at NAV, which could result in such Shares being acquired at a price higher or lower than that at which they could be sold in the secondary market on the day they are issued (this will also be clearly disclosed in the Prospectus). Brokers providing the DTC Dividend Reinvestment Service to their customers will determine whether to charge Beneficial Owners a fee for this service.

29. The Prospectus will make clear to Beneficial Owners that the Distribution Reinvestment Program is optional and that its availability is determined by their broker, at its own discretion. Broker-dealers are not required to utilize the DTC Dividend Reinvestment Service, and may instead offer a dividend reinvestment program under which Shares are purchased in the secondary market at current market prices or no dividend reinvestment program at all.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only.[26] Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Shares on the secondary market should not vary materially from NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and

[25] Some DTC Participants may not elect to utilize the DTC Dividend Reinvestment Service. Beneficial Owners will be encouraged to contact their broker to ascertain the availability of the DTC Dividend Reinvestment Service through such broker.

[26] The Master Funds will not require relief from sections 2(a)(32) and 5(a)(1) because the Master Funds will issue individually redeemable securities.

sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Foreign Funds will be contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for the underlying foreign securities held by a Foreign Fund. Applicants state that the delivery cycles currently practicable for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fifteen (15) calendar days.[27] Accordingly, with respect to Foreign Funds only, applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow Foreign Funds to pay redemption proceeds within fifteen (15) calendar days following the tender of Creation Units for redemption.[28]

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of a Foreign Fund to be made within fifteen calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants suggest that a redemption payment occurring within fifteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.[29]

Section 12(d)(1) of the Act

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from knowingly selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit registered management investment companies and unit investment trusts (''UITs'') that are not advised or sponsored by the Adviser and are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act as the Funds (such management investment companies are referred to as ''Investing Management Companies,'' such UITs are referred to as ''Investing Trusts,'' and Investing Management Companies and Investing Trusts are collectively referred to as ''Funds of Funds''), to acquire Shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any Broker registered under the Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act.

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Fund of Funds Adviser'') and may be sub-advised by investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a ''Fund of Funds Sub-Adviser''). Any investment adviser to an Investing Management Company will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over a Fund.[30] To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with a Fund of Funds

[27] Certain countries in which a Fund may invest have historically had settlement periods of up to fifteen (15) calendar days.

[28] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may otherwise have under rule 15c6–1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

[29] In addition, the requested exemption from section 22(e) would only apply to in-kind redemptions by the Feeder Funds and would not apply to in-kind redemptions by other feeder funds.

[30] A ''Fund of Funds Affiliate'' is a Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor (''Fund of Funds Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser (''Fund of Funds Sub-Advisory Group'').

15. Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser or Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund, or its respective Master Fund, in which the Investing Management Company may invest. In addition, under condition B.5., a Fund of Funds Adviser, or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund, or its respective Master Fund, under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[31]

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund, nor its respective Master Fund, will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund, or its respective Master Fund, to purchase shares of other investment companies for short-term cash management purposes or pursuant to the Master-Feeder Relief. To ensure a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Funds will enter into an agreement with the Fund (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in the Funds and not in any other investment company.

18. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Fund would still retain its ability to reject any initial investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A) by declining to enter into a FOF Participation Agreement with the Fund of Funds.

19. Applicants also are seeking the Master-Feeder Relief to permit the Feeder Funds to perform creations and redemptions of Shares in-kind in a master-feeder structure. Applicants assert that this structure is substantially identical to traditional master-feeder structures permitted pursuant to the exception provided in section 12(d)(1)(E) of the Act. Section 12(d)(1)(E) provides that the percentage limitations of section 12(d)(1)(A) and (B) shall not apply to a security issued by an investment company (in this case, the shares of the applicable Master Fund) if, among other things, that security is the only investment security held by the investing investment company (in this case, the Feeder Fund). Applicants believe the proposed master-feeder structure complies with section 12(d)(1)(E) because each Feeder Fund will hold only investment securities issued by its corresponding Master Fund; however, the Feeder Funds may receive securities other than securities of its corresponding Master Fund if a Feeder Fund accepts an in-kind creation. To the extent that a Feeder Fund may be deemed to be holding both shares of the Master Fund and other securities, applicants request relief from section 12(d)(1)(A) and (B). The Feeder Funds would operate in compliance with all other provisions of section 12(d)(1)(E).

Sections 17(a)(1) and (2) of the Act

20. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling,

[31] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser or an entity controlling, controlled by or under common control with an Adviser (an ''Affiliated Fund''). Any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or such Funds, may be deemed affiliated persons of the Trust or such Funds. In addition, an investor could own 5% or more, or in excess of 25% of the outstanding shares of one or more Affiliated Funds making that investor a Second-Tier Affiliate of the Funds.

21. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are Affiliated Persons of the Funds, or Second-Tier Affiliates of the Funds, solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds, to effectuate purchases and redemptions ''in-kind.''

22. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making ''in-kind'' purchases or ''in-kind'' redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for ''in-kind'' purchases of Creation Units and the redemption procedures for ''in-kind'' redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Fund will be valued in the identical manner as those Portfolio Holdings currently held by such Fund and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer. Applicants do not believe that ''in-kind'' purchases and redemptions will result in abusive self-dealing or overreaching, but rather assert that such procedures will be implemented consistently with each Fund's objectives and with the general purposes of the Act. Applicants believe that ''in-kind'' purchases and redemptions will be made on terms reasonable to Applicants and any affiliated persons because they will be valued pursuant to verifiable objective standards. The method of valuing Portfolio Holdings held by a Fund is identical to that used for calculating ''in-kind'' purchase or redemption values and therefore creates no opportunity for affiliated persons or Second-Tier Affiliates of Applicants to effect a transaction detrimental to the other holders of Shares of that Fund. Similarly, Applicants submit that, by using the same standards for valuing Portfolio Holdings held by a Fund as are used for calculating ''in-kind'' redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that the ability to take deposits and make redemptions ''in-kind'' will help each Fund to track closely its Underlying Index and therefore aid in achieving the Fund's objectives.

23. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit a Fund that is an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[32] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.[33] Applicants believe that any proposed transactions directly between the Funds and Funds of Funds will be consistent with the policies of each Fund of Funds. The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

24. To the extent that a Fund operates in a master-feeder structure, applicants also request relief permitting the Feeder Funds to engage in in-kind creations and redemptions with the applicable Master Fund. Applicants state that the customary section 17(a)(1) and 17(a)(2) relief would not be sufficient to permit such transactions because the Feeder Funds and the applicable Master Fund could also be affiliated by virtue of having the same investment adviser. However, applicants believe that in-kind creations and redemptions between a Feeder Fund and a Master Fund advised by the same investment adviser do not involve ''overreaching'' by an affiliated person. Such transactions will occur only at the Feeder Fund's proportionate share of the Master Fund's net assets, and the distributed securities will be valued in the same manner as they are valued for the purposes of calculating the applicable Master Fund's NAV. Further, all such transactions will be effected with respect to pre-determined securities and on the same terms with respect to all investors. Finally, such transaction would only occur as a result of, and to effectuate, a creation or redemption transaction between the Feeder Fund and a third-party investor. Applicants believe that the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transactions are consistent with the policy of each Fund and will be consistent with the investment objectives and policies of each Fund of Funds, and the proposed transactions are consistent with the general purposes of the Act.

Distribution Reinvestment Relief

25. Applicants also seek an order to permit the Funds to operate the Distribution Reinvestment Program. Applicants state that the Distribution Reinvestment Program is reasonable and fair because it is voluntary and each Beneficial Owner will have in advance accurate and explicit information that makes clear the terms of the Distribution Reinvestment Program and the consequences of participation. The

[32] Although applicants believe that most Funds of Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund, a Fund of Funds might seek to transact in Creation Units directly with a Fund that is an affiliated person of a Fund of Funds. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Fund, relief from Section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to a Fund of Funds and redemptions of those Shares. Applicants are not seeking relief from Section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

[33] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Fund of Funds, may be prohibited by Section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

Distribution Reinvestment Program does not involve any overreaching on the part of any person concerned because it operates the same for each Beneficial Owner who elects to participate, and is structured in the public interest because it is designed to give those Beneficial Owners who elect to participate a convenient and efficient method to reinvest distributions without paying a brokerage commission. In addition, although brokers providing the Distribution Reinvestment Program could charge a fee, applicants represent that typically brokers do not charge for this service.

26. Applicants do not believe that the issuance of Shares under the Distribution Reinvestment Program will have a material effect on the overall operation of the Funds, including on the efficiency of the arbitrage mechanism inherent in ETFs. In addition, applicants do not believe that providing Beneficial Owners with an added optional benefit (the ability to reinvest in Shares at NAV) will change the Beneficial Owners' expectations about the Funds or the fact that individual Shares trade at secondary market prices. Applicants believe that Beneficial Owners (other than Authorized Participants) generally expect to buy and sell individual Shares only through secondary market transactions at market prices and that such owners will not be confused by the Distribution Reinvestment Program. Therefore, applicants believe that the Distribution Reinvestment Program meets the standards for relief under section 6(c) of the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. The requested relief, other than the section 12(d)(1) Relief and the section 17 relief related to a master-feeder structure, will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the requested order, Shares of such Fund will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund (other than pursuant to the Distribution Reinvestment Program) and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. Each Self-Indexing Fund, Long/Short Fund and 130/30 Fund will post on the Web site on each Business Day, before commencement of trading of Shares on the Exchange, the Fund's, or its respective Master Fund's, Portfolio Holdings.

6. No Adviser or any Sub-Adviser, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for a Fund, or its respective Master Fund, through a transaction in which the Fund, or its respective Master Fund, could not engage directly.

B. Section 12(d)(1) Relief

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Fund, or its respective Master Fund, within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund, or its respective Master Fund, within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to a Fund, or its respective Master Fund, for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Fund, or its respective Master Fund, or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund, or its respective Master Fund, or Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Fund exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board of the Fund, or its respective Master Fund, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of Section 2(a)(19) of the Act (''non-interested Board members''), will determine that any consideration paid by the Fund, or its respective Master Fund, to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund, or its respective Master Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund, or its respective Master Fund, and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund, or its respective Master Fund, under rule 12b–l under the Act) received from a Fund, or its respective Master Fund, by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund

of Funds Adviser, trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund, or its respective Master Fund, in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund, or its respective Master Fund, by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund, or its respective Master Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund, or its respective Master Fund, to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund, or its respective Master Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund, or its respective Master Fund, in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund, or its respective Master Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund, or its respective Master Fund, in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund, or its respective Master Fund, will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limit in section 12(d)(1)(A), a Fund of Funds and the Trust will execute a FOF Participation Agreement stating without limitation that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund, or its respective Master Fund, in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund, or its respective Master Fund, will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent (i) the Fund, or its respective Master Fund, acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund, or its respective Master Fund, to acquire securities of one or more investment companies for short-term cash management purposes or (ii) the Fund acquires securities of the Master Fund pursuant to the Master–Feeder Relief.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23317 Filed 9–30–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73215; File No. SR–BOX–2014–21]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding the Short Term Option Series Program

September 25, 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 September 22, 2014, BOX Options Exchange LLC (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 self-regulatory organization. The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BOX Rules 5050 (Series of Options Contracts Open for Trading) and 6090 (Terms of Index Options Contracts) to conform Exchange rules pertaining to finer strike price intervals for standard expiration contracts in option classes that also have Short Term Options (''STOs'')[3] listed on them (''related non-STOs'', ''related non Short Term Options'', or ''non-STOs''). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BOX Rules 5050 (Series of Options Contracts Open for Trading) and 6090 (Terms of Index Options Contracts) to conform Exchange rules pertaining to finer strike price intervals for standard expiration contracts in option classes that also have STOs listed on them.

The STO Program, which was initiated in 2010,[4] is codified in IM–5050–6 to Rule 5050 for non-index options including equity and exchange traded fund (''ETF'') options, and in IM–6090–2 to Rule 6090 for index options. Under these rules, the Exchange may list STOs in up to fifty option classes,[5] including up to thirty index option classes,[6] in addition to option classes that are selected by other securities exchanges that employ a similar program under their respective rules. For each of these option classes, the Exchange may list five STO expiration dates at any given time, not counting monthly or quarterly expirations.[7] Specifically, on any Thursday or Friday that is a business day, the Exchange may list STOs in designated option classes that expire at the close of business on each of the next five consecutive Fridays that are business days.[8] These STOs, which can be several weeks or more from expiration, may be listed in strike price intervals of $0.50, $1, or $2.50, with the finer strike price intervals being offered for lower priced securities, and for options that trade in the Exchange's dollar strike program.[9] More specifically, the Exchange may list short term options in $0.50 intervals for strike prices less than $75, or for option classes that trade in one dollar increments in the related non-short term option, $1 intervals for strike prices that are between $75 and $150, and $2.50 intervals for strike prices above $150.[10]

The Exchange recently proposed a change to the STO Program in IM–5050–6 to Rule 5050 regarding non-index options and IM–6090–2 to Rule 6090 regarding index options that allows related non-STO series to be opened during the month prior to expiration of such non-STO series in the same manner and strike price intervals as permitted for STOs.[11] Thus, the Prior Month Filing would allow standard monthly expiration options to trade—a month prior to expiration—in the same intervals as the weekly expiration STO. The Exchange does not propose any substantive changes, but only ensures that the language within Rules 5050 and 6090, respectively, is in conformity in respect of the interval that STOs and non-STOs may trade in during the month prior to expiration of the non-STOs.

Rules 5050(d)(6) and 6090(c)(6) now state that notwithstanding any other provision regarding strike prices in the respective rules, related non-STO series may be opened during the *week* prior to expiration of such non-STO series in the same manner and strike price intervals as permitted for STOs. This proposal conforms Rule 5050(d)(6) to IM–5050–6 and Rule 6090(c)(6) to IM- 6090–2. Specifically, as proposed Rules 5050(d)(6) and 6090(c)(6) would state that notwithstanding any other provision regarding strike prices in this rule, non-STOs that are on a class or an index class that has been selected to participate in the STO Program (related non-STO series) shall be opened during the *month* prior to expiration of such related non-STO series in the same manner and intervals as permitted in IM–5050–6 to Rule 5050 or IM–6090–2 to Rule 6090.[12] No other changes are proposed.

The Exchange is now permitted to list the standard monthly expiration contract options in these narrower STO 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. As discussed, this proposal simply conforms the language of Rules 5050 and 6090 to make each of the rules internally consistent.

The Exchange believes that continuing to introduce consistent strike price intervals for STOs and related non-STOs during the month prior to expiration benefits investors by giving them more flexibility to closely tailor their investment decisions. The Exchange also believes that this provides the investing public and other market participants with additional opportunities to hedge their investments, thus allowing these investors to better manage their risk exposure.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[13] in general, and Section 6(b)(5) of the Act,[14] in particular, in that it is

[3] 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. STOs are listed and traded pursuant to the STO Program. For STO Program rules regarding non-index options, *see* Rule 5050 and IM–5050–6 to Rule 5050. For STO Program rules regarding index options, *see* Rule 6090 and IM–6090–2 to Rule 6090.

[4] *See* Securities Exchange Act Release No. 62505 (July 15, 2010), 75 FR 42792 (July 22, 2010) (Notice of Filing and Immediate Effectiveness of SR–BX–2010–047).

[5] *See* IM–5050–6(b)(1) to Rule 5050.

[6] *See* IM–6090–2(b)(1) to Rule 6090.

[7] *See* IM–5050–6(a) to Rule 5050 and IM–6090–2(a) to Rule 6090.

[8] *Id.*

[9] *See* IM–5050–6(b)(5) to Rule 5050 and IM–6090–2(b)(5) to Rule 6090.

[10] *Id.* The $2.50 interval does not apply to indexes. *See* IM–6090–2(b)(5) to Rule 6090.

[11] *See* Securities Exchange Act Release No. 72483 (June 26, 2014), 79 FR 37820 (July 2, 2014) (Notice of Filing and Immediate Effectiveness of SR–BOX–2014–18) (the ''Prior Month Filing'').

[12] *See* Rules 5050(d)(6) and 6090(c)(6).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

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.

As noted above, 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. The Prior Month Filing allowed STOs and non-STOs to be listed and traded in the same intervals pursuant to Rules 5050 (non-index options) and 6090 (index options). This proposal conforms the language of each of the respective rules to reflect the monthly time period, and negates potential confusion from inconsistent language.[15]

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 not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed technical conforming rule change continues to provide 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

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will allow STOs to be traded on the Exchange pursuant to rules that are internally conformed, and would thus negate any potential market confusion. For this reason, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest; and will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission designates the proposed rule change to be operative upon filing.[18]

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–BOX–2014–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2014–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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–BOX–2014–21 and should be submitted on or before October 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23312 Filed 9–30–14; 8:45 am]

BILLING CODE 8011–01–P

[15] The Exchange represents that, because of the technical conforming nature of the proposal, it will not have any impact on system capacity.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). 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.

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73210; File No. SR–FINRA–2014–037]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt FINRA Rules 0190 (Effective Date of Revocation, Cancellation, Expulsion, Suspension or Resignation) and 2040 (Payments to Unregistered Persons) in the Consolidated FINRA Rulebook, and Amend FINRA Rule 8311 (Effect of a Suspension, Revocation, Cancellation, or Bar)

September 25, 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 September 10, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. 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

FINRA is proposing to adopt FINRA Rule 2040 (Payments to Unregistered Persons) regarding the payment of transaction-based compensation by members to unregistered persons, and Supplementary Material .01 (Reasonable Support for Determination of Compliance with Section 15(a) of the Exchange Act). The proposed rule change would streamline provisions of NASD Rule 2410 (Net Prices to Persons Not in Investment Banking or Securities Business), NASD Rule 2420 (Dealing with Non-Members), NASD IM–2420–1 (Transactions Between Members and Non-Members), NASD IM–2420–2 (Continuing Commissions Policy), Incorporated NYSE Rule 353 (Rebates and Compensation), Incorporated NYSE Rule Interpretation 345(a)(i)/01 (Compensation to Non-Registered Persons) and Incorporated NYSE Rule Interpretation 345(a)(i)/02 (Compensation Paid for Advisory Solicitations), which would be deleted from the current FINRA rulebook. The proposed rule change also would adopt the requirements of NASD Rule 1060(b) (Persons Exempt from Registration) and Incorporated NYSE Rule Interpretation 345(a)(i)/03 (Compensation to Non-Registered Foreign Persons Acting as Finders), as FINRA Rule 2040(c) (Nonregistered Foreign Finders) in the consolidated FINRA rulebook without material change. In addition, the proposed rule change would amend FINRA Rule 8311 (Effect of a Suspension, Revocation, Cancellation, or Bar), add new Supplementary Material .01 (Remuneration Accrued Prior to Effective Date of Sanction or Disqualification), and adopt the requirements of NASD IM–2420–1(a) (Non-members of the Association), as FINRA Rule 0190 (Effective Date of Revocation, Cancellation, Expulsion, Suspension or Resignation).

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt FINRA Rule 2040 (Payments to Unregistered Persons) regarding the payment of transaction-based compensation by members to unregistered persons, and Supplementary Material .01 (Reasonable Support for Determination of Compliance with Section 15(a) of the Exchange Act). The proposed rule change would streamline provisions of NASD Rule 2410 (Net Prices to Persons Not in Investment Banking or Securities Business), NASD Rule 2420 (Dealing with Non-Members), NASD IM–2420–1 (Transactions Between Members and Non-Members), NASD IM–2420–2 (Continuing Commissions Policy), NYSE Rule 353 (Rebates and Compensation), NYSE Rule Interpretation 345(a)(i)/01 (Compensation to Non-Registered Persons) and NYSE Rule Interpretation 345(a)(i)/02 (Compensation Paid for Advisory Solicitations), which would be deleted from the current FINRA rulebook. The proposed rule change also would adopt the requirements of NASD Rule 1060(b) (Persons Exempt from Registration) and NYSE Rule Interpretation 345(a)(i)/03 (Compensation to Non-Registered Foreign Persons Acting as Finders), as FINRA Rule 2040(c) (Nonregistered Foreign Finders) in the Consolidated FINRA Rulebook without material change. In addition, the proposed rule change would amend FINRA Rule 8311 (Effect of a Suspension, Revocation, Cancellation, or Bar), add new Supplementary Material .01 (Remuneration Accrued Prior to Effective Date of Sanction or Disqualification), and adopt the requirements of NASD IM–2420–1(a) (Non-members of the Association), as FINRA Rule 0190 (Effective Date of Revocation, Cancellation, Expulsion, Suspension or Resignation).

A. Background

NASD Rule 1060(b) (Persons Exempt from Registration), NASD Rule 2410 (Net Prices to Persons Not in Investment Banking or Securities Business), NASD Rule 2420 (Dealing with Non-Members), NASD IM–2420–1 (Transactions Between Members and Non-Members), and NASD IM–2420–2 (Continuing Commissions Policy) (collectively, the ''NASD Non-Member Rules'') govern payments by members to unregistered persons. The NASD Non-Member Rules (other than NASD Rule 1060(b)) were developed in an era when a registered broker-dealer could engage in an over-the-counter securities business and elect not to be a member of a registered securities association.[4] An original

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process). For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

[4] *See* Maloney Act of 1938, Public Law 75–719, 52 Stat. 1070, which added Section 15A of the Exchange Act to provide for the establishment of national securities associations with authority, subject to SEC review, to supervise the over-the-counter securities market and promulgate rules governing voluntary membership of broker-dealers.

purpose of the NASD Non-Member Rules was to encourage non-members to become members by generally prohibiting members from providing commissions or discounts/concessions to non-members.[5] Since the adoption of the NASD Non-Member Rules, the laws governing broker-dealers have changed, and today virtually all broker-dealers doing business with the public are FINRA members.[6]

As a result, FINRA generally has interpreted the provisions of the NASD Non-Member Rules, through interpretive letters and other guidance, to prohibit the payment of commissions or fees derived from a securities transaction to any non-member that may be acting as an unregistered broker-dealer. Section 15(a)(1) of the Exchange Act generally requires any broker-dealer effecting transactions in securities to be registered with the SEC. FINRA has refrained from providing interpretive guidance on whether a person is acting as an unregistered broker-dealer, as the authority to interpret Section 15(a) of the Exchange Act rests with the SEC. Registration as a broker-dealer provides a framework of rules to regulate the conduct of persons who receive transaction-based compensation, the receipt of which can create potential incentives for abusive sales practices. SEC guidance states that receipt of securities transaction-based compensation is an indication that a person is engaged in the securities business and that such person generally should be registered as a broker-dealer.

B. Proposed FINRA Rule 2040

FINRA is proposing to adopt new FINRA Rule 2040 (Payments to Unregistered Persons), which eliminates the current NASD Non-Member Rules and related NYSE Non-Member Rules (discussed further below) and replaces them with a more straightforward rule. The proposed rule expressly aligns with Section 15(a) of the Exchange Act and its related guidance to determine whether registration as a broker-dealer is required for certain persons to receive transaction-related compensation. As further discussed in Item II.C. below, the proposed rule change was published for comment in *Regulatory Notice* 09–69.[7] FINRA received seven comment letters. A significant number of the commenters expressed concern regarding the potential regulatory burden of obtaining SEC no-action letters to determine whether particular activities would require registration of persons as broker-dealers under Section 15(a) of the Exchange Act, and the proposed deletion of NASD Rule 1060(b) and NYSE Rule Interpretation 345(a)(i)/03 relating to payments to foreign finders. In an effort to respond to these concerns, FINRA is proposing to adopt Supplementary Material .01 (Reasonable Support for Determination of Compliance with Section 15(a) of the Exchange Act) to proposed FINRA Rule 2040 to provide guidance to members regarding the manner in which they can reasonably support a determination that an unregistered person is not required to be registered under Section 15(a) of the Exchange Act by reason of receiving payments from the member and the activities related thereto. FINRA is also proposing to retain NASD Rule 1060(b) and NYSE Rule Interpretation 345(a)(i)/03 relating to foreign finders as proposed FINRA Rule 2040(c). The proposed rule sets forth the following requirements:

• *Payments to Unregistered Persons*

FINRA is proposing to adopt new FINRA Rule 2040(a), which prohibits members or associated persons from, directly or indirectly, paying any compensation, fees, concessions, discounts, commissions or other allowances to:

(1) any person that is not registered as a broker-dealer under Section 15(a) of the Exchange Act but, by reason of receipt of any such payments and the activities related thereto, is required to be so registered under applicable federal securities laws and SEA rules and regulations; or

(2) any appropriately registered associated person, unless such payment complies with all applicable federal securities laws, FINRA rules and SEA rules and regulations.

The proposed change would make the rule consistent with FINRA staff interpretations under NASD Rule 2420 and SEC rules and regulations under Section 15(a) of the Exchange Act.[8] Under the proposal, persons would look to SEC rules and regulations to determine whether the activities in question require registration as a broker-dealer under Section 15(a) of the Exchange Act. Persons may also rely on related published guidance issued by the SEC or its staff in the form of releases, no-action letters or interpretations. The proposal would align the rule with SEC staff guidance that states that receipt of securities transaction-based compensation is an indication that a person is engaged in the securities business and that such person generally should be registered as a broker-dealer. The proposed change also prohibits payments to appropriately registered associated persons unless such payments comply with applicable federal securities laws, FINRA rules and SEA rules and regulations.

FINRA is proposing to adopt Supplementary Material .01 (Reasonable Support for Determination of Compliance with Section 15(a) of the Exchange Act) to proposed FINRA Rule 2040 to provide guidance to members. In applying the proposed rule, FINRA will expect members to determine that their proposed activities would not require the recipient of the payments to register as a broker-dealer and to reasonably support such determination. Members that are uncertain as to whether an unregistered person may be required to be registered under Section 15(a) of the Exchange Act by reason of receiving payments from the member and the activities related thereto can derive support for their determination by, among other things, (1) reasonably relying on previously published releases, no-action letters or interpretations from the Commission or Commission staff that apply to their facts and circumstances; (2) seeking a

[5] Section 15A(e)(1) of the Exchange Act states that ''[t]he rules of a registered securities association may provide that no member thereof shall deal with any nonmember professional (as defined in paragraph (2) of this subsection) except at the same prices, for the same commissions or fees, and on the same terms and conditions as are by such member accorded to the general public.'' Section 15A(e)(2) of the Exchange Act defines ''nonmember professional'' as ''(A) with respect to transactions in securities other than municipal securities, any registered broker or dealer who is not a member of a registered securities association, except such a broker or dealer who deals exclusively in commercial paper, bankers' acceptances, and commercial bills, and (B) with respect to transactions in municipal securities, any municipal securities dealer (other than a bank or division or department of a bank) who is not a member of any registered securities association and any municipal securities broker who is not a member of any such association.'' The legislative reports from Congress on this provision state that exclusion from membership would in effect be a form of economic sanction on such non-members. *See* S. Rep. No. 1455 and H. R. Rep. No 2307, 75th Cong., 3rd Sess. (1938).

[6] Section 15(b)(8) of the Exchange Act provides that ''[i]t shall be unlawful for any registered broker or dealer to effect any transaction in, or induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills), unless such broker or dealer is a member of a securities association registered pursuant to Section 15A of this title or effects transactions in securities solely on a national securities exchange of which it is a member.''

[7] *See Regulatory Notice* 09–69 (December 2009).

[8] *See* FINRA Interpretative Letters issued under NASD Rule 2420: Letter to Richard Schultz, Triad Securities Corp., dated December 28, 2007; Letter to Jonathan K. Lagemann, Esq., Law Offices of Jonathan Kord Lagemann, dated June 27, 2001; Letter to Jay Adams Knight, Esq., Musick, Peeler & Garrett LLP, dated March 8, 2001; and Letter to Michael R. Miller, Esq., Kunkel Miller & Hament, dated May 31, 2000 (available at *http://www.finra.org/Industry/Regulation/Guidance/InterpretiveLetters/ConductRules/index.htm*).

no-action letter from the Commission staff; or (3) obtaining a legal opinion from independent, reputable U.S. licensed counsel knowledgeable in the area. The member's determination must be reasonable under the circumstances and should be reviewed periodically if payments to the unregistered person are ongoing in nature. In addition, a member must maintain books and records that reflect the member's determination.

• *Retiring Representatives*

FINRA is also proposing to adopt new FINRA Rule 2040(b), which codifies existing FINRA staff guidance on the payment by members of continuing commissions to retiring registered representatives.[9] The proposal permits members to pay continuing commissions to retiring registered representatives of the member, after they cease to be associated with the member, that are derived from accounts held for continuing customers of the retiring registered representative regardless of whether customer funds or securities are added to the accounts during the period of retirement, provided that: (1) A bona fide contract between the member and the retiring registered representative providing for the payments was entered into in good faith while the person was a registered representative of the member and such contract, among other things, prohibits the retiring registered representative from soliciting new business, opening new accounts or servicing the accounts generating the continuing commission payments; and (2) the arrangement complies with applicable federal securities laws and SEA rules and regulations.

The proposal defines the term ''retiring registered representative'' to mean an individual who retires from a member (including as a result of a total disability) and leaves the securities industry.[10] In the case of death of the retiring registered representative, the retiring registered representative's beneficiary designated in the written contract or the retiring registered representative's estate if no beneficiary is so designated may be the beneficiary of the respective member's agreement with the deceased representative.

FINRA believes this proposal is consistent with SEC guidance on the payment of compensation to retiring representatives.[11]

• *Nonregistered Foreign Finders*

As further discussed in Item II.C. below, in light of comments raised in response to *Regulatory Notice* 09–69, FINRA is proposing to transfer NASD Rule 1060(b) (Persons Exempt from Registration) and NYSE Rule Interpretation 345(a)(i)/03 (Compensation to Non-Registered Foreign Persons Acting as Finders) with minor technical changes into the Consolidated FINRA Rulebook as FINRA Rule 2040(c).[12] As approved by the SEC in 1993 and 1995, respectively, NYSE Rule Interpretation 345(a)(i)/03 and NASD Rule 1060(b) are largely identical provisions and provide that members and persons associated with a member may pay transaction-related compensation to nonregistered foreign finders, based upon the business of customers such persons direct to members, subject to identified conditions. FINRA is proposing non-substantive, technical changes to the proposed rule text to make it easier to read. Specifically, proposed FINRA Rule 2040(c) would provide that a member may pay to a nonregistered foreign finder (the ''finder'') transaction-related compensation based upon the business of customers the finder directs to the member if the following conditions are met (''foreign finders exemption''):

(1) The member has assured itself that the finder who will receive the compensation is not required to register in the United States as a broker-dealer nor is subject to a disqualification as defined in Article III, Section 4 of FINRA's By-Laws, and has further assured itself that the compensation arrangement does not violate applicable foreign law;

(2) the finder is a foreign national (not a U.S. citizen) or foreign entity domiciled abroad;

(3) the customers are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad transacting business in either foreign or U.S. securities;

(4) customers receive a descriptive document, similar to that required by Rule 206(4)–3(b) of the Investment Advisers Act of 1940 (''Investment Advisers Act''), that discloses what compensation is being paid to finders;

(5) customers provide written acknowledgment to the member of the existence of the compensation arrangement and such acknowledgment is retained and made available for inspection by FINRA;

(6) records reflecting payments to finders are maintained on the member's books, and actual agreements between the member and the finder are available for inspection by FINRA; and

(7) the confirmation of each transaction indicates that a referral or finders fee is being paid pursuant to an agreement.

The rule provides that if all the conditions set forth in the rule are satisfied, members can pay transaction-related compensation to nonregistered foreign finders based on the business of non-U.S. customers that finders refer to members. Specifically, the rule permits compensation to ''be made on an ongoing basis and tied to such variables as the level of business generated or assets under control, notwithstanding the fact that the foreign finders' sole involvement would be the initial referral to a member.''[13] The SEC Foreign Finders Approval Order states that ''[t]he provision was intended to give members the opportunity to enhance their competitive position in foreign countries where new accounts are frequently opened on a referral basis with ongoing compensation for such referral.''[14]

Proposed FINRA Rule 2040(c) would have the same scope as the current rule and continue to allow on-going transaction-based payments to nonregistered foreign finders under the limited circumstances set forth in the current rule. As in the current rule, ''[w]hile the foreign finders' *sole involvement* would be the initial referral

[9] *See* FINRA Interpretative Letters issued under NASD IM–2420–2: Letter to Name Not Public, dated November 27, 2012; Letter to Ted A. Troutman, Esquire, Muir & Troutman, dated February 4, 2002; Letter to Joe Tully, Commonwealth Financial Network, dated August 9, 2001; and Letter to Peter D. Koffer, Esq, Twenty-First Securities Corporation, dated January 21, 2000 (available at *http://www.finra.org/Industry/Regulation/Guidance/InterpretiveLetters/ConductRules/index.htm*).

[10] *See* SEC No-Action Letter to the Securities Industry and Financial Markets Association, 2008 SEC No-Act. LEXIS 695, November 20, 2008. The letter provides that ''[t]he retiring representative must sever association with the Firm and with any municipal securities dealer, government securities dealer, investment adviser or investment company affiliates (except as may be required to maintain any licenses or registrations required by any state) and, is not permitted to be associated with any other broker, dealer, municipal securities dealer, government securities dealer, investment adviser or investment company, during the term of his or her agreement. The retiring representative also may not be associated with any bank, insurance company or insurance agency (affiliated with the Firm or otherwise) during the term of his or her agreement if the retiring representative's activities relate to effecting transactions in securities.'' *See also* SEC No-Action Letter to Amy Lee, Chief Compliance Officer, Co-CEO, Packerland Brokerage Services, 2013 SEC No-Act. LEXIS 237, March 18, 2013.

[11] *See supra* note 10.

[12] *See supra* note 7.

[13] *See* Securities Exchange Act Release No. 32431 (June 8, 1993), 58 FR 33128 (June 15, 1993) (Order Approving File No. SR–NYSE–92–33 Relating to an Interpretation to NYSE Rule 345 (Employees—Registration, Approval, Records)) (''SEC Approval Order of NYSE Rule 345 Interpretation''). *See also* Securities Exchange Act Release No. 35361 (February 13, 1995), 60 FR 9417 (February 17, 1995) (Order Approving File No. SR–NASD–94–51) (''SEC Foreign Finders Approval Order'').

[14] *See supra* note 13.

to a member or member organization [of non-U.S. customers to the firm], compensation could be made on an ongoing basis and tied to such variables as the level of business generated or assets under control. All accounts referred by such foreign finders would be carried on the books of the member.'' [15] Similar to NASD Rule 1060(b), any activities beyond the initial referral of non-U.S. customers and payment of transaction-based compensation for any such activities would not be within the permissible scope of the foreign finders exception as set forth in proposed FINRA Rule 2040(c). Based solely on its activities in compliance with proposed FINRA Rule 2040(c), the foreign finder would not be considered an associated person of the member. However, unless otherwise permitted by the federal securities laws or FINRA rules, a person who receives commissions or other transaction-based compensation in connection with securities transactions generally has to be a registered broker-dealer or an appropriately registered associated person of a broker-dealer who is supervised by a broker-dealer. Members that engage foreign finders would be required to have reasonable procedures that appropriately address the limited scope of activities permissible under such arrangements.[16]

C. Amendments to FINRA Rule 8311

• *FINRA Rule 8311*

FINRA is proposing amendments to FINRA Rule 8311 to eliminate duplicative provisions in NASD IM–2420–2 and to clarify the scope of the rule on payments by members to persons subject to suspension, revocation, cancellation, bar (each a ''sanction'') or other disqualification. The proposed rule provides that if a person is subject to a sanction or other disqualification, a member may not allow such person to be associated with it in any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity. The proposed rule further provides that a member may not pay or credit to any person subject to a sanction or disqualification, during the period of the sanction or disqualification or any period thereafter, any salary, commission, profit, or any other remuneration that the person might accrue, not just earn, during the period of the sanction or disqualification. However, a member may make payments or credits to a person subject to a sanction that are consistent with the scope of activities permitted under the sanction where the sanction solely limits an associated person from conducting specified activities (such as a suspension from acting in a principal capacity) or to a disqualified person that has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to associate with a member.

Specifically, the proposal clarifies that:

(1) Other disqualifications, not just suspensions, revocations, cancellations or bars, are subject to the rule (and the rule is not limited to orders issued by FINRA or the SEC);

(2) a member may not allow a person subject to a sanction or disqualification to ''be'' associated with such member in any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity, not simply ''remain'' associated;

(3) a member may not pay any remuneration to a person subject to a sanction or disqualification, not just payments that result directly or indirectly from any securities transaction; and

(4) the rule applies to any salary, commission, profit or remuneration that the associated person might ''accrue,'' not just ''earn'' during the period of a sanction or disqualification, not just suspension.

FINRA is also proposing to add a new paragraph to the rule that would expressly permit a member to pay to any person subject to a sanction or disqualification any remuneration pursuant to an insurance or medical plan, indemnity agreement relating to legal fees, or as required by an arbitration award or court judgment. FINRA believes that these exceptions strike the correct balance by permitting certain key payments.

• *Proposed Supplementary Material .01*

In addition, FINRA is proposing to add new Supplementary Material .01 (Remuneration Accrued Prior to Effective Date of Sanction or Disqualification) that relates to commissions accrued by a person prior to the effective date of a sanction or disqualification. The proposed supplementary material would permit a member to pay a person that is subject to a sanction or disqualification remuneration that the member can evidence accrued to the person prior to the effective date of the sanction or disqualification. However, a member may not pay any remuneration that accrued to the person that relates to or results from the activity giving rise to the sanction or disqualification, and any such payment or credit must comply with applicable federal securities laws. FINRA believes that adopting this new provision is necessary to address questions by the industry on a member's ability to pay commissions and other remuneration that was accrued by the person prior to a sanction or disqualification going into effect. FINRA also believes the supplementary material, together with the proposed amendments discussed above, clarify that a member may not pay trail commissions to a person that may accrue during the period of the sanction or disqualification; rather, the member can only make such payments where the member can evidence that they accrued to the person prior to the effective date of the sanction or disqualification.

D. Adoption of New General Standard—FINRA Rule 0190

In addition, FINRA is proposing to adopt a new general standard, proposed FINRA Rule 0190 (Effective Date of Revocation, Cancellation, Expulsion, Suspension or Resignation), that is based largely on provisions of NASD IM–2420–1(a) and would provide that a member will be treated as a non-member of FINRA from the effective date of any order or notice from FINRA or the SEC issuing a revocation, cancellation, expulsion or suspension of its membership. In the case of suspension, a member will be automatically reinstated to membership in FINRA at the termination of the suspension period. FINRA believes this is consistent with the current provisions of NASD IM–2420–1(a) and should be retained in the FINRA rulebook.

E. NASD and NYSE Rules To Be Deleted

FINRA proposes to eliminate the following NASD and NYSE Rules and related interpretations because FINRA believes that proposed FINRA Rule 2040 simplifies and clarifies the meaning of such rules consistent with Section 15(a) of the Exchange Act. Specifically, NASD Rule 2410, NASD Rule 2420, NASD IM–2420–1, NASD IM–2420–2, NYSE Rule 353, NYSE Rule Interpretation 345(a)(i)/01 and NYSE Rule Interpretation 345(a)(i)/02 will be consolidated into proposed FINRA Rule 2040, providing members with one concise rule that

[15] *See* Securities Exchange Act Release No. 34941 (November 4, 1994), 59 FR 56102 (November 10, 1994) (Notice of Filing of File No. SR–NASD–94–51). *See also* SEC Approval Order of NYSE Rule 345 Interpretation.

[16] *See* SEC Foreign Finders Approval Order. FINRA notes that the scope of permissible activities and associated regulatory requirements differ between foreign finders and foreign associates, who are registered persons of the member. *See also* NASD Rule 1100 (Foreign Associates).

outlines the applicable requirements for payments to non-members.

• *NASD Rule 2410*

NASD Rule 2410 (Net Prices to Persons Not in Investment Banking and Securities Business) prohibits payments or concessions by members to ''any person not actually engaged in the investment banking or securities business.''

• *NASD Rule 2420*

NASD Rule 2420 (Dealing with Non-Members) generally prohibits members from dealing with, or making payments to, non-member broker-dealers, except at the same prices, fees or concessions offered to the general public. NASD Rule 2420(b) specifically prohibits members from joining any non-member broker-dealer syndicate or group in connection with the sale of securities. NASD Rule 2420(c) provides that members may pay concessions and fees to a non-member broker or dealer in a foreign country who is not eligible for membership, provided the member obtains an agreement from such foreign broker or dealer in making sales of securities within the United States that such foreign broker or dealer will act in accordance with the general requirements of the rule to prohibit the payment of concessions or discounts to non-members that are not allowed to the general public. NASD Rule 2420(d) provides restrictions on payments by or to persons that have been suspended or expelled.

• *NASD IM–2420–1*

NASD IM–2420–1 (Transactions between Members and Non-Members) provides certain exemptions from the general prohibition on arrangements with non-members set forth in NASD Rule 2420. For example, the rule provides exemptions for arrangements with certain non-members relating to transactions in ''exempted securities,'' or transactions on a national securities exchange. The rule further clarifies that a firm that is suspended or expelled from FINRA membership, or whose registration is revoked by the SEC, is to be considered a non-member for purposes of the rule.

• *NASD IM–2420–2*

NASD IM–2420–2 (Continuing Commissions Policy) allows members to pay continuing commissions to former registered representatives after they cease to be employed by a member, if, among other things, a bona fide contract between the member and the registered representative calling for the payments was entered into in good faith while the person was a registered representative of the employing member. The rule states that such contracts cannot permit the solicitation of new business or the opening of new accounts by persons who are not registered, and must conform with all applicable laws and regulations. The rule also provides that NASD Rule 2830(c) (Investment Company Securities, Conditions for Discounts to Dealers) should not be interpreted to require a sales agreement for a dealer to receive commissions on direct payments by clients or automatic dividend reinvestments. The rule further contains a prohibition on the payment of any kind by a member to any person who is not eligible for FINRA membership or eligible to be associated with a member because of any disqualification, such as revocation, expulsion or suspension that is still in effect. The rule recognizes the validity of contracts entered into in good faith to allow retired representatives to receive continuing compensation on their accounts or to designate a widow or other beneficiary; however, the rule states that members are not required to enter into such contracts and FINRA will not specify the terms of such contracts.

• *NYSE Rule 353*

NYSE Rule 353 (Rebates and Compensation) prohibits a member, principal executive, registered representative or officer from, directly or indirectly, rebating to any person any part of the compensation he receives from the solicitation of orders for the purchase or sale of securities or other similar instruments for the accounts of customers of the member, or pay such compensation, or any part thereof, as a bonus, commission, fee or other consideration for business sought or procured for him or for any other member. NYSE Rule 353(b) further provides that a member, principal executive, registered representative or officer cannot be compensated for business done by or through his employer after the termination of his employment except as may be permitted by the NYSE.

• *NYSE Rule Interpretations 345(a)(i)/01 and/02*

NYSE Rule Interpretation 345(a)(i)/01 (Compensation to Non-Registered Persons) prohibits a member from paying to nonregistered persons compensation based upon the business of customers they direct to the member if such compensation is, among other things, formulated as a direct percentage of commissions generated and is other than on an isolated basis.

NYSE Rule Interpretation 345(a)(i)/02 (Compensation Paid for Advisory Solicitations) provides that a member that is also registered with the SEC as an investment adviser may enter into arrangements that comply with Rule 206(4)–3 (Cash Payments for Client Solicitations) of the Investment Advisers Act.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The effective date will be no later than 240 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,[17] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will clarify and streamline current NASD and NYSE rules relating to payments to unregistered persons for adoption as FINRA Rules in the new Consolidated FINRA Rulebook. Specifically, proposed FINRA Rule 2040(a) expressly aligns with Section 15(a) of the Exchange Act and its related guidance to determine whether registration as a broker-dealer is required for certain persons to receive transaction-related compensation; proposed FINRA Rule 2040(b) codifies existing FINRA guidance on the payment by members of continuing commissions to retiring registered representatives consistent with SEC guidance in this area; and proposed FINRA Rule 2040(c) adopts the foreign finders provisions of NASD Rule 1060(b) and NYSE Rule Interpretation 345(a)(i)/03 with technical changes. Proposed amendments to FINRA Rule 8311 eliminate duplicate provisions in NASD IM–2420–2 and clarify the scope of the rule on payments by members to persons subject to sanctions.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes the proposed rule change is consistent with Section 15(a) of the Exchange Act and its related guidance, and will promote the goal of clarity concerning the rules applicable to payments of transaction-based compensation to unregistered persons. Specifically, the proposed rule change will clarify and streamline current

[17] 15 U.S.C. 78*o*–3(b)(6).

NASD and NYSE rules relating to payments to unregistered persons for adoption as FINRA Rules in the new Consolidated FINRA Rulebook. Proposed FINRA Rule 2040(a) expressly aligns with Section 15(a) of the Exchange Act and its related guidance to determine whether registration as a broker-dealer is required for certain persons to receive transaction-related compensation; proposed FINRA Rule 2040(b) codifies existing FINRA guidance on the payment by members of continuing commissions to retiring registered representatives consistent with SEC guidance in this area; and proposed FINRA Rule 2040(c) adopts the foreign finders provisions of NASD Rule 1060(b) and NYSE Rule Interpretation 345(a)(i)/03 with technical changes.

As the proposed rule change aligns FINRA's requirements with the requirements of Section 15(a) of the Exchange Act, FINRA believes that the proposed rule change is appropriately tailored to minimize the burden and cost of complying with the proposed rule change. Moreover, FINRA believes that any burden from the proposal will be minimal because, while the proposal streamlines the current rule to make it more concise, the obligation of firms to analyze payment arrangements for compliance with Section 15(a) of the Exchange Act is not new. In addition, proposed Supplementary Material .01 (Reasonable Support for Determination of Compliance with Section 15(a) of the Exchange Act) to proposed FINRA Rule 2040 aims to assist compliance efforts by firms by providing guidance to members regarding the manner in which they can reasonably support a determination that an unregistered person is not required to be registered under Section 15(a) of the Exchange Act by reason of receiving payments from the member and the activities related thereto. Proposed Supplementary Material .01 (Remuneration Accrued Prior to Effective Date of Sanction or Disqualification) to FINRA Rule 8311 also provides guidance to firms regarding permissible payments.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in *Regulatory Notice* 09–69 (December 2009) (''*Notice*''). Seven comment letters were received in response to the *Notice.*[18] A copy of the *Notice* is attached as Exhibit 2a. A list of the comment letters received in response to the *Notice* is attached as Exhibit 2b. Copies of the comment letters received in response to the *Notice* are attached as Exhibit 2c. Below is a summary of the comments and FINRA's responses.

Most commenters appreciated the intent of the proposed rule change to more directly align the rules on payments made by FINRA members to unregistered persons with SEC positions regarding broker-dealer registration requirements. However, the commenters had concerns with a number of the proposed changes. Specifically, the comments focused on the following issues: (a) The proposed deletion of NASD Rule 1060(b) and NYSE Rule Interpretation 345(a)(i)/03 relating to payments to foreign finders; (b) the proposed adoption of FINRA Rule 2040(b) to replace NASD IM–2420–2 (Continuing Commissions Policy); (c) the proposed deletion of NASD Rule 2420(c) relating to transactions with foreign non-members; (d) the proposed deletion of NYSE Rule Interpretation 345(a)(i)/02 (Compensation Paid for Advisory Solicitations); (e) the potential regulatory burden of obtaining SEC no-action letters to determine whether particular activities would require registration as a broker-dealer; (f) the concern that the proposal does not recognize state law statutory exemptions for the payment of compensation in limited circumstances; and (g) the proposed amendments to FINRA Rule 8311 regarding payments to sanctioned persons.

As further discussed below, in light of the comments, FINRA is proposing to adopt Supplementary Material .01 (Reasonable Support for Determination of Compliance with Section 15(a) of the Exchange Act) to proposed FINRA Rule 2040 to provide guidance to members regarding the manner in which they can reasonably support a determination that an unregistered person is not required to be registered under Section 15(a) of the Exchange Act by reason of receiving payments from the member and the activities related thereto. FINRA is also proposing to retain NASD Rule 1060(b) and NYSE Rule Interpretation 345(a)(i)/03 relating to foreign finders as proposed FINRA Rule 2040(c).

(a) Foreign Finders (Proposed Deletion of NASD Rule 1060(b) and NYSE Rule Interpretation 345(a)(i)/03)

In the *Notice,* FINRA proposed deleting NASD Rule 1060(b) and NYSE Rule Interpretation 345(a)(i)/03 (''Existing Foreign Finders Rules''), which permit members to pay transaction-based compensation to nonregistered foreign finders under specified conditions. The *Notice* indicated that these largely identical rules would be deleted and the activity would be subject to the general requirement in proposed FINRA Rule 2040(a) that would require firms to look to SEC rules and regulations to determine whether the activity in question requires registration as a broker-dealer under Section 15(a) of the Exchange Act. Six commenters raised concerns regarding the proposed deletion of these rules and argued strongly that FINRA retain the Existing Foreign Finders Rules.[19] Specifically, the commenters stated that the proposed elimination of these rules would harm U.S. business by reducing competitiveness and that SEC guidance in this area is not clear and, therefore, the conditions set forth in the Existing Foreign Finders Rules provide necessary clarity to the industry.[20]

• *Harm Business/Reduce Competitiveness*

Several commenters expressed concern regarding the potential harm to current business models if NASD Rule 1060(b) is eliminated.[21] One commenter stated that foreign ''finders provide an important and necessary service in that they have introduced foreign customers to U.S. markets, which is consistent with the transition of the financial markets to be international in nature.''[22] Another commenter stated that the proposed elimination of the standard established by the NASD and NYSE rules ''may reduce the competitiveness of FINRA members outside the United States.''[23] The commenter further stated that the rules present low risk to the securities markets and investors

[18] *See* comment letters from Everarado Vidaurri, Chief Executive Officer, Intercam Securities, Inc., received January 21, 2010 (''Intercam''); Jorge Ramos, President, Monex Securities, to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 29, 2010 (''Monex''); Daniel E. LeGaye, The LeGaye Law Firm P.C., received February 1, 2010 (''LeGaye Law''); Peter J. Chepucavage, Executive Director, CFAW, General Counsel, Plexus Consulting LLC, on behalf of the International Association of Small Broker-Dealers and Advisers, received February 1, 2010 (''Plexus''); Cliff Kirsch and Eric Arnold, Sutherland Asbill & Brennan LLP for The Committee of Annuity Insurers, to Marcia E. Asquith, Corporate Secretary, FINRA, dated February 1, 2010 (''CAI''); Ethan W. Johnson, Partner, Morgan, Lewis & Bockius LLP, to Marcia E. Asquith, Corporate Secretary, FINRA, dated February 1, 2010 (''Morgan Lewis''); and Rex A. Staples, General Counsel, North American Securities Administrators Association, Inc., to Marcia E. Asquith, Corporate Secretary, FINRA, dated February 16, 2010 (''NASAA'').

[19] *See* Intercam, Monex, LeGaye Law, Plexus, Morgan Lewis and NASAA.

[20] *See supra* note 19.

[21] *See* Intercam, Monex, LeGaye Law and Morgan Lewis.

[22] *See* Monex.

[23] *See* Morgan Lewis.

because, according to the commenter, ''the sole involvement of the referring foreign person is to make a referral to the member firm or to obtain execution, clearing or settlement services from such member and they do not permit broader contact with U.S. persons.'' [24] Another commenter noted that the main activity in Miami and South Florida is to provide International Private Banking Services in the U.S. to non-U.S. citizens, primarily domiciled in Latin America, and elimination of the rules would ''have a very negative impact in our industry, our labor market and to the U.S. economy as a whole.'' [25] This commenter believed the proposal to eliminate the Existing Foreign Finders Rules would destroy completely the business model in which firms have been operating under for many years under NASD Rule 1060(b). Two commenters noted that foreign finders provide a valuable service to firms because they have an integral knowledge of their customers that are referred to firms, including suitability and investment needs.[26]

• *SEC Guidance Relating to Foreign Finder Relationships is Not Clear*

Four commenters noted that the SEC's position on payments to foreign finders is not clear, and as such, will result in additional confusion for regulatory compliance professionals and members.[27] One commenter stated ''that SEC rules and staff interpretations in this area are sparse and fact specific and do not give adequate guidance on the question when a non U.S. person is required to register with the SEC as a broker-dealer as a result of a relationship with a U.S. member firm.'' [28] Two commenters noted that SEA Rule 15a–6 does not contemplate a foreign broker-dealer introducing its non-U.S. customers to a member to make recommendations and effect transactions on behalf of the customers, while simultaneously paying the foreign broker-dealer compensation for such referral.[29]

Several commenters urged FINRA to work with the SEC to develop comprehensive guidance on this matter.[30] One commenter noted that the existing framework provides adequate protection to referred clients in the forms of additional disclosure mandated by the existing rules.[31] Other commenters noted that foreign finders are subject to regulation in their respective countries.[32] One commenter recommended that FINRA ''ask that the [C]ommission clarify its position including the numerous no-action letters issued over the last 30 years . . . it would help the investment community understand the current status of the issue and may inform the [C]ommission as to how widespread a problem exists.'' [33]

• *Existing Foreign Finders Rules Provide Necessary Clarity*

Several commenters expressed concern that the proposed elimination of the Existing Foreign Finders Rules would eliminate rules that the industry has relied on for decades to pay transaction-based compensation to foreign finders.[34] One commenter stated that the Existing Foreign Finders Rules have ''generally allowed FINRA members, under the enumerated conditions, to pay transaction-based compensation to a non-U.S. finder that solicits non-U.S. business for the member.'' [35] The same commenter further stated that ''there were a number of critical components that had to be met with respect to the rule, two of the fundamental conditions with respect to the payment of compensation to a foreign finder was: (1) That the foreign finder limit its activities so that the finder was not required to register in the U.S. as a broker-dealer; and (2) that the compensation arrangement not violate applicable foreign law.'' As a result, the commenter contended that ''FINRA member firms should be able to rely on clear guidance with respect to these activities, and the current rules gave that guidance to members.'' [36] Another commenter stated that ''the existing rules with respect to foreign referrals and dealing with non-member firms are helpful and provide adequate protection to foreign customers that are referred to FINRA members.'' [37]

• *FINRA Response to Comments on Existing Foreign Finders Rules*

In response to the commenters' concerns, FINRA is proposing to adopt the Existing Foreign Finders Rules, with minor technical changes, as new FINRA Rule 2040(c) in the Consolidated FINRA Rulebook. As in the current rule, a member could pay transaction-related compensation to nonregistered foreign finders where the finders' sole involvement is the initial referral to the member of non-U.S. customers to the member, and the member complies with all the conditions set forth in the rule.

(b) *Continuing Commission Payments to Retiring Registered Representatives (Proposed FINRA Rule 2040(b)(2))*

Proposed Rule 2040(b)(2) would permit FINRA members to pay continuing commissions to retiring registered representatives of the member after they cease to be associated with the member provided that (1) a bona fide contract between the member and the retiring registered representative providing for the payments was entered into in good faith while the person was a registered representative of the member and such contract, among other things, prohibits the retiring registered representative from soliciting new business, opening new accounts, or servicing the accounts generating the continuing commission payments; and (2) the arrangement complies with applicable federal securities laws, SEA rules and regulations. In the *Notice,* the proposed rule included text that provided that the arrangement also must comply with ''published guidance issued by the SEC or its staff in the form of releases, no-action letters or interpretations.'' Based on concerns raised by commenters described hereinafter, FINRA has deleted this language from the proposed rule text in this rule filing.[38] However, FINRA believes that members should review applicable SEC and SEC staff guidance in the form of releases, no-action letters and interpretations because they contain helpful interpretative information regarding the Commission's and the SEC staff's views on the application of SEA rules and regulations.

One commenter stated it is unclear whether the proposal is intended to add any substantive restrictions or requirements, or if it merely forbids members from making payments that are already otherwise prohibited.[39] The commenter noted that FINRA members are already subject to SEC rules and regulations, so FINRA rules containing blanket references to SEC rules and published guidance is problematic, especially when SEC guidance is extremely fact specific. The commenter further states ''such positions do not allow for the notice and comment period that accompanies formal rulemaking and, would in effect give such positions the force and effect of a

[24] *See* Morgan Lewis. As noted above, if a foreign finder's activities go beyond an initial referral of non-U.S. customers to the member, the foreign finders provisions in proposed FINRA Rule 2040(c) would not be applicable.

[25] *See* Monex.

[26] *See* Monex and LeGaye Law.

[27] *See* Intercam, Monex, LeGaye Law and Morgan Lewis.

[28] *See* Morgan Lewis.

[29] *See* Monex and LeGaye Law.

[30] *See* Monex, LeGaye Law and Morgan Lewis.

[31] *See* Morgan Lewis.

[32] *See* Monex and LeGaye Law.

[33] *See* Plexus.

[34] *See* Intercam, Monex, Morgan Lewis and LeGaye Law.

[35] *See* Monex.

[36] *See supra* note 35.

[37] *See* Morgan Lewis.

[38] *See* CAI.

[39] *See supra* note 38.

rule.'' [40] The same commenter further requested clarification from FINRA that a retiring registered representative who receives compensation payable under a group variable annuity contract may receive compensation on individuals who become certificate holders under such contract after the registered representative has retired.

Another commenter raised concerns regarding the open-ended nature of this provision.[41] The commenter expressed concern regarding the extent of hidden fee arrangements between shadow parties who trade consumers' accounts and questioned, ''[h]as there been consideration as to potential trigger points wherein these types of post 'retirement' payment pose potential and/or actual conflicts of interest, the dangers to the underlying account holder whose assets are being used to generate fees that are split by multiple parties, and is full disclosure to consumers being provided?'' [42]

FINRA believes that the SEC guidance in this area combined with current FINRA guidance are accurately summarized in the proposal and, as such, declines to make any substantive changes to the proposal. Guidance regarding the permissibility of payments to retiring registered representatives primarily focuses on compliance with Section 15(a) of the Exchange Act. In November 2008, the staff of the Division of Trading and Markets of the Commission issued a no-action letter in which it stated that it would ''not recommend enforcement action to the Commission under Section 15(a) of the Securities Exchange Act of 1934 against a retiring representative of a registered broker-dealer (''Firm'') if the retiring representative, the Firm, and the receiving representative, comply with the terms and conditions described in [the] letter, without the retiring representative maintaining his or her status as a registered associated person of the Firm upon retirement.'' [43] The no-action letter was based on the use of procedures described in the letter with respect to the circumstances by which a retiring representative may be compensated after the termination of employment for business done by or through his or her employer before the termination of employment. The staff of the Division of Trading and Markets has issued several other prior no-action letters regarding payments to retiring registered representatives.[44]

Consistent with such SEC no-action letters, FINRA has issued guidance in the form of interpretative letters under NASD IM–2420–2 that specifically notes that members need to be aware of SEC no-action letters that address the conditions under which a former, retired registered representative, who is no longer employed by a broker-dealer, may continue to receive commissions without being required to register as a broker-dealer under Section 15 of the Exchange Act.[45] Such FINRA interpretative letters have expressly stated that ''[t]he determination of whether a person should be registered as a broker/dealer rests with the Securities and Exchange Commission (the ''SEC''). In this regard, [the firm] may wish to direct [its] inquiry to the SEC's Division of [Trading and Markets] for guidance. To the extent that [the member] receives no-action relief from the SEC to make such payments, [the member's] payment of continuing commissions to [the retiring registered representative] would not violate NASD Rule 2420 so long as the requirements of NASD IM–2420 are satisfied.'' [46]

(c) *Transactions with Foreign Non-Members (Proposed Deletion of NASD Rule 2420(c))*

NASD Rule 2420(c) generally provides that payments can be made to any non-member broker-dealer in a foreign country who is not eligible for membership in a registered securities association provided that, in any transaction with any such non-member broker-dealer where a selling concession, discount, or other allowance is allowed, the member making the payment secures from the foreign broker-dealer an agreement that, in making any sales to purchasers within the U.S. of securities acquired as a result of such transactions, the foreign broker-dealer will comply with paragraphs (a) and (b) of NASD Rule 2420 to the same extent the member must in connection with the transaction.

One commenter stated that ''[w]hile this rule does not expressly address the relationship between U.S. clearing firms and their non-U.S. correspondents, it is frequently cited as confirmation that the FINRA rules permit members to enter into a variety of clearing and sub-clearing agreements and other brokerage arrangements with foreign non-members and to share fees or pay other forms of compensation without requiring the foreign firms or their personnel to register with the SEC.'' [47] The same commenter recommended that NASD Rule 2420(c) be retained in its current form, but suggested one clarification whereby the ''eligible for membership in a national securities association'' is changed to ''not being required to be a registered broker-dealer in the United States and member of a national securities association,'' because the commenter believed it is difficult to determine when a foreign firm would not be eligible for membership and further eligibility is not a relevant determinant of whether a foreign firm should register. In the alternative, assuming the Existing Foreign Finders Rules and NASD Rule 2420(c) are not retained in their current forms, the same commenter recommended the following changes to the proposed rule text: (i) Eliminate ''or offer to pay'' from the introductory clause in paragraph (a) since determining whether and when an offer to pay has been made would add a level of subjectivity that would undercut the effort to bring clarity to this area; (ii) eliminate ''appropriately'' from the beginning of paragraph (a)(2) as a requirement in the paragraph will need to be satisfied even if the person is ''inappropriately'' registered (if, according to the commenter, that is even possible); and (iii) narrow the scope of the pre-conditions in paragraph (a)(2) to just those of verifying that the person is registered and not subject to any statutory disqualifications, as the burden of checking all the laws, rules and regulations cited in the proposed rule will be a strong disincentive against members ever making such payments.[48]

FINRA declines to retain NASD Rule 2420(c) because, as discussed in detail above, proposed FINRA Rule 2040(a) expressly aligns with Section 15(a) of the Exchange Act and its related guidance to determine whether registration as a broker-dealer is required for persons to receive transaction-related compensation. In this regard, FINRA notes the commenter's suggestion that, if FINRA were to retain NASD Rule 2420(c), FINRA should replace the phrase ''eligible for membership in a national securities association'' with ''not being required to be a registered broker-dealer in the United States and member of a national securities association.'' FINRA believes that proposed FINRA Rule 2040(a) is consistent with such

[40] *See supra* note 38.

[41] *See* NASAA.

[42] *See supra* note 41.

[43] *See supra* note 10.

[44] *See* SEC No-Action Letters: Gruntal & Co., L.L.C., 1998 SEC No-Act. LEXIS 1146, October 14, 1998, Prudential Securities Incorporated, 1994 SEC No-Act. LEXIS 750, October 11, 1994 and Shearson Lehman Brothers Inc., 1993 SEC No-Act. LEXIS 548, March 25, 1993.

[45] *See supra* note 9.

[46] *See supra* note 9.

[47] *See* Morgan Lewis.

[48] *Id.*

recommendation. FINRA further does not agree with the commenter's implication that NASD Rule 2420(c) can validly be used as confirmation that FINRA rules permit members to enter into a variety of brokerage arrangements with foreign non-members and to share fees or pay other forms of compensation without requiring the foreign firms or their personnel to register with the SEC. FINRA is considering guidance on circumstances where such arrangements may comply with FINRA rules.

FINRA also declines to eliminate the word ''appropriately'' and to narrow the scope of the pre-conditions in proposed FINRA Rule 2040(c) to require that the member only determine that a person receiving transaction-related compensation is registered and not subject to any statutory disqualification because FINRA believes that members need to determine that the person receiving the transaction-related compensation is registered in the appropriate category necessary to receive the type of compensation being paid, and that the payments are permissible under applicable laws, consistent with SEC guidance in this area. In response to the commenter, however, FINRA is proposing to eliminate the phrase ''or offer to pay'' from proposed FINRA Rule 2040(a) as it agrees that the language may add uncertainty and subjectivity to the proposed rule and is not needed to achieve the regulatory purpose of the proposed rule.

(d) *Compensation Paid for Advisory Solicitations (Proposed Deletion of NYSE Rule Interpretation 345(a)(i)/02)*

One commenter stated ''there has been substantial confusion related to the regulation of broker-dealers and investment advisers that were dually registered with the SEC (''Dual Registrants'') in recent history.'' [49] The commenter stated that members face uncertainty where definitions or guidelines differ between the Investment Advisers Act and the Exchange Act, and by proposing to eliminate NYSE Rule Interpretation 345(a)(i)/02, FINRA is creating further confusion for Dual Registrants. NYSE Rule Interpretation 345(a)(i)/02 [50] generally provides that a broker-dealer that is registered with the SEC as an investment adviser under the Investment Advisers Act may enter into arrangements that comply with Rule 206(4)–3 (Cash Payments for Client Solicitations) of the Investment Advisers Act, and that such arrangements will not be deemed contrary to the registration requirements of NYSE Rule 345.[51] The commenter stated, for example, that while Rule 206(4)–3 of the Investment Advisers Act allows for the cash payment to a solicitor under certain circumstances, the proposal would require the payment to comply with all applicable federal securities laws, including FINRA rules.[52]

FINRA does not believe that it is necessary to retain the content of NYSE Rule Interpretation 345(a)(i)/02. It is FINRA's view that proposed FINRA Rule 2040 does not narrow the scope of Rule 206(4)–3 under the Investment Advisers Act, which applies to cash payments by investment advisers for client solicitations for advisory business. Where Rule 206(4)–3 payments to an investment adviser by a dually registered broker-dealer do not require the solicitor to register under Section 15(a) of the Exchange Act, proposed FINRA Rule 2040 would continue to permit them. The question of whether activities permissible under Rule 206(4)–3 under the Investment Advisers Act would require the solicitor to be registered as a broker-dealer under Section 15(a) of the Exchange Act is determined by the SEC.[53]

(e) *Burden of Obtaining SEC No-Action Relief*

Two commenters raised concerns regarding the requirement in proposed FINRA Rule 2040 to look to SEC no-action letters to determine compliance with Section 15(a) of the Exchange Act.[54] Specifically, one commenter stated ''FINRA is placing additional regulatory uncertainty on FINRA member firms and further hampering their efforts to obtain meaningful compliance.'' [55] Several commenters were concerned that it will be expensive and cumbersome to seek no-action relief and such no-action relief would be subject to continuous revision.[56] In addition, one commenter raised concerns that since there is no ''reasonable belief'' standard for reliance on specific SEC no-action relief, members will need to hire attorneys to support their positions that the SEC rules, regulations and other guidance are applicable to their arrangement.[57] Moreover, the commenter stated that the SEC has declined to consider the matter in prior no-action letters, noting that the SEC does not as ''a matter of practice,'' provide no-action relief in this context and questioned how a firm can meaningfully comply with the proposed rule.[58]

FINRA believes that interpretation of Section 15(a) of the Exchange Act is a critical component in determining whether payments to unregistered persons are permissible under the federal securities laws. FINRA acknowledges that while Section 15(a) of the Exchange Act does not specifically address the numerous and varying arrangements that may exist with respect to payments to unregistered persons, SEC guidance is controlling in this area.

As described in Item 3 above, FINRA is proposing to adopt Supplementary Material .01 (Reasonable Support for Determination of Compliance with Section 15(a) of the Exchange Act) to proposed FINRA Rule 2040 to provide guidance to members regarding the manner in which they can reasonably support a determination that an unregistered person is not required to be registered under Section 15(a) of the Exchange Act by reason of receiving payments from the member and the activities related thereto. Members can derive support for their determination by, among other things, (1) reasonably relying on previously published releases, no-action letters or interpretations from the Commission or Commission staff that apply to their facts and circumstances; (2) seeking a no-action letter from the Commission

[49] *See* LeGaye Law.

[50] NYSE Rule Interpretation 345/(a)(i)/02 (Compensation Paid for Advisory Solicitations) reads as follows: ''A member organization, registered with the SEC as an investment adviser, may enter into any arrangement that fully complies with Rule 206(4)–3 ('Cash Payments for Client Solicitations') of the Investment Advisers Act of 1940. Such arrangements will not be deemed contrary to the registration requirements of Rule 345 (see also Rule 10 'Definition of Registered Representative'). Member organizations are advised to check on the applicability of any state registration requirements for member organizations and associated persons.''

[51] *See* Rule 206(4)–3 (Cash Payments for Client Solicitations) of the Investment Advisers Act, which generally makes it unlawful for any investment adviser that is required to be registered under the Investment Advisers Act to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless certain specified conditions are met.

[52] *See supra* note 49.

[53] *See* Mayer Brown LLP, 2008 SEC No-Act. LEXIS 515, July 15, 2008 and Response of the Office of Chief Counsel, Division of Investment Management, 2008 SEC No-Act. LEXIS 524, July 28, 2008, which state that ''[Firm has] not asked, and this letter does not address, whether a person's receipt of cash compensation from an investment adviser of an investment pool for soliciting or referring investors or prospective investors to invest in the pool would result in the person being considered a 'broker' under Section 3(a)(4) of the Securities Exchange Act of 1934.''

[54] *See* Monex and LeGaye Law.

[55] *See* Monex.

[56] *See* Monex, LeGaye Law, Morgan Lewis and NASAA.

[57] *See supra* note 55.

[58] *See supra* note 55.

staff; or (3) obtaining a legal opinion from independent, reputable U.S. licensed counsel knowledgeable in the area. The member's determination must be reasonable under the circumstances and should be reviewed periodically if payments to the unregistered person are ongoing in nature. In addition, a member must maintain books and records that reflect the member's determination.

(f) *Proposal Does Not Recognize State Law Exemptions*

One commenter expressed concern that the proposal does not address those FINRA members that engage in primarily an intra-state business, and the state of their domicile recognizes statutory exemptions for the payment of compensation in limited circumstances for certain finders.[59] FINRA acknowledges that state rules and regulations may permit different types of payment arrangements, and where such payments are permissible under the federal securities laws and SEC rules, regulations or guidance, such payments would be in compliance with proposed FINRA Rule 2040.

(g) *Payments to Sanctioned Persons (FINRA Rule 8311)*

The proposed rule change prohibits FINRA members from allowing persons subject to suspension, revocation, cancellation of registration, bar from association with a member or other disqualification to be associated with the member in any capacity inconsistent with the sanction. The proposal also would prohibit payment to a person during the period of sanction or anytime thereafter if the payment might accrue during the time of sanction.

One commenter believed the proposal is unclear as to whether registered representatives subject to sanctions would be permitted to continue to receive compensation earned as a result of automatic payments to a variable annuity contract made during the period of sanction.[60] The commenter recommended that registered representatives be permitted to receive these automatic payments, where such payments were arranged for during a time period that preceded the sanctions.

FINRA believes that proposed Supplementary Material .01 (Remuneration Accrued Prior to Effective Date of Sanction or Disqualification) to FINRA Rule 8311 addresses this question. Proposed Supplementary Material .01 provides that a member can pay or credit a person subject to a sanction salary, commission, profit or other remuneration that the member can evidence accrued to the person prior to the effective date of the sanction, unless such remuneration relates to results from the activity giving rise to the sanction. Accordingly, a member would need to demonstrate that the remuneration accrued prior to the effective date of the sanction in order to pay or credit the remuneration to the sanctioned individual.

The commenter also requested that FINRA clarify that the sanctions identified under the proposal do not in any way impact the current FINRA rules and guidance regarding registered representatives who are deemed to be ''inactive'' due to failure to complete the regulatory element of continuing education requirements in a timely manner under NASD Rule 1120 (now FINRA Rule 1250).[61] FINRA notes that the proposal is not intended to alter existing guidance under FINRA Rule 1250 with respect to registered representatives who are deemed to be ''inactive'' due to failure to complete the regulatory element of continuing education requirements in a timely manner.

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 (i) as the Commission may designate up to 90 days of such date 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–FINRA–2014–037 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2014–037 and should be submitted on or before October 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[62]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23308 Filed 9–30–14; 8:45 am]

BILLING CODE 8011–01–P

[59] *See* LeGaye Law.

[60] *See* CAI.

[61] The SEC approved the adoption of NASD Rule 1120 (Continuing Education Requirements) as new FINRA Rule 1250 (Continuing Education Requirements), subject to certain amendments, effective on October 17, 2011. *See* Securities Exchange Act Release No. 64687 (June 16, 2011); 76 FR 36586 (June 22, 2011) (Order Approving File No. SR–FINRA–2011–013).

[62] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73212; File No. SR–MIAX–2014–39]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Options on Certain Market Vectors ETFs

September 25, 2014.

I. Introduction

On July 28, 2014, the Miami International Securities Exchange LLC (''MIAX'' or ''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 options on shares of the Market Vectors Brazil Small-Cap ETF, Market Vectors Indonesia Index ETF, Market Vectors Poland ETF, and Market Vectors Russia ETF (collectively ''Market Vectors ETFs''). The proposed rule change was published for comment in the **Federal Register** on August 12, 2014.[3] No comments were received on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list for trading on the Exchange options on shares of the Market Vectors ETFs. According to the Exchange, the Market Vectors ETFs are registered pursuant to the Investment Company Act of 1940 as management investment companies designed to hold a portfolio of securities that track the Market Vectors Brazil Small-Cap Index (''Brazil Small-Cap Index''), which consists of stocks traded primarily on BM&FBOVESPA; the Market Vectors Indonesia Index (''Indonesia Index''), which consists of stocks traded primarily on the Indonesia Stock Exchange; Market Vectors Poland Index (''Poland Index''), which consists of stocks traded primarily on the Warsaw Stock Exchange; and the Market Vectors Russia Index (''Russia Index''), which consists of stocks traded primarily on the Moscow Exchange.[4]

MIAX Rule 402 establishes the Exchange's initial listing standards for equity options (the ''Listing Standards'') that must be satisfied for the Exchange to list and trade options on the shares of open-end investment companies, such as the Market Vectors ETFs.[5] Options on the Market Vectors ETFs do not meet the Listing Standards. In particular, options on the Market Vectors ETFs do not meet the requirement concerning the existence of a comprehensive surveillance sharing agreement (''CSSA'') between MIAX and its foreign counterpart.[6] Accordingly, the Exchange may not list and trade options on the Market Vectors ETFs.

According to the Exchange, it has attempted, but not entered into, CSSAs with the applicable foreign markets. In its proposal, the Exchange requested that the Commission allow the listing and trading of options on shares of the Market Vectors ETFs without a CSSA. Instead, the Exchange proposes to rely on agreements between the Commission and the applicable foreign regulators. Specifically, the Exchange cited to the agreements between the Commission and (i) the Comissao de Valores Mobiliarios (''CVM''),[7] which has responsibility for the Brazilian exchanges and over-the-counter markets, and (ii) the Federal Commission on Securities and the Capital Market of the Government of the Russian Federation (''FCSCM''), a forerunner of the Federal Commission on Securities Market of Russia, which has responsibility for Russian stock exchanges.[8] In addition, the Exchange noted that the Indonesia Financial Services Authority, which has responsibility for the Indonesian stock exchanges, the Polish Financial Supervision Authority, which has responsibility for Polish stock exchanges, and the Commission are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding.

III. Proceedings To Determine Whether To Approve or Disapprove SR–MIAX–2014–39 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [9] 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, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[10] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the proposed rule change's consistency with Section 6(b)(5) of the Act,[11] which require that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposed rule change. In particular, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72777 (August 6, 2014), 79 FR 47165 (''Notice''). The Commission notes that MIAX also submitted a similar proposed rule change to list and trade options on shares of certain iShares ETFs. *See* Securities Exchange Act Release No. 72492 (June 27, 2014), 79 FR 38099 (July 3, 2014) (MIAX–2014–30). The Commission is similarly instituting proceedings to determine whether to approve or disapprove that proposed rule change as well.

[4] *See* Notice, *supra* note 3. Market Vectors Index Solutions created and maintains the Brazil Small-Cap Index, Indonesia Index, Poland Index, and Russia Index.

[5] MIAX Rule 402(i) provides the Listing Standards for shares or other securities (''Exchange-Traded Fund Shares'') that are traded on a national securities exchange and are defined as an ''NMS stock'' under Rule 600 of Regulation NMS.

[6] *See* MIAX Rule 402(i)(5)(ii)(B). This rule requires that ''component securities of an index or portfolio of securities on which the Exchange Traded Fund Shares are based for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index.''

[7] *See* Notice, *supra* note 3, (citing to MOU with the CVM dated as of July 24, 2012).

[8] *See* Notice, *supra* note 3 (citing to the MOU with the FCSCM dated December 6, 1995).

[9] 15 U.S.C. 78s(b)(2)(B).

[10] *Id.* Section 19(b)(2)(B) of the Exchange Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *See id.*

[11] 15 U.S.C. 78f(b)(5).

Commission invites the written views of interested persons concerning whether the proposal is inconsistent with Section 6(b)(5) [12] or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which 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.[13]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by October 22, 2014. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 5, 2014. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposed rule change, in addition to any other comments they may wish to submit about the proposed rule change.

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–MIAX–2014–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2014–39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2014–39 and should be submitted on or before October 22, 2014. Rebuttal comments should be submitted by November 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23310 Filed 9–30–14; 8:45 am]

BILLING CODE 8011–01–P

[12] *Id.*

[13] Section 19(b) (2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 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).

[14] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73218; File No. SR–NYSEMKT–2014–79]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Sections 141 and 142 of the NYSE MKT Company Guide To Increase Certain of the Fees Set Forth Therein

September 25, 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 September 19, 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 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 Sections 141 and 142 of the NYSE MKT Company Guide (the ''Company Guide'') to increase certain of the fees set forth therein. The Exchange proposes to immediately reflect the proposed changes in the Company Guide, but not to implement the proposed fee changes until January 1, 2015. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Sections 141 and 142 of the Company Guide to increase certain of the fees set forth therein. The Exchange proposes to immediately reflect the proposed changes in the Company Guide, but not to implement the proposed fee changes until January 1, 2015.[4]

The Exchange proposes to amend Section 141 of the Company Guide to increase its annual fees for stock issues as follows:

i. For issuers with 50,000,000 shares outstanding or less, the annual fee would be increased by $5,000, from $30,000 to $35,000;

ii. for issuers with 50,000,001 to 75,000,000 shares outstanding, the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange has proposed changes to the Company Guide, as reflected in Exhibit 5 attached hereto, in a manner that would permit readers of the Company Guide to identify the changes that would be implemented on January 1, 2015. The Commission notes that Exhibit 5 is attached to the filing, not to this Notice.

annual fee would be increased by $5,000, from $40,000 to $45,000;

iii. for issuers with more than 75,000,000 shares outstanding, the annual fee would be increased by $5,000, from $45,000 to $50,000.

The Exchange proposes to amend Section 142 of the Company Guide to increase the minimum and maximum fees it charges issuers for subsequent listing of additional shares. The Exchange proposes to increase the minimum fee from $2,000 to $7,500 and the maximum fee per application to list additional shares from $45,000 to $65,000.

The Exchange proposed to further amend Section 142 of the Company Guide to increase the fee it charges an issuer that changes its name or symbol from $2,500 to $7,500.

For the same reasons set forth below in the Statutory Basis section, the Exchange proposes to make the aforementioned fee increases to better reflect (i) the Exchange's costs related to listing equity securities and (ii) the increased compliance and technology costs required to operate and maintain the Exchange's equity platform.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4)[6] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5)[7] of the Act in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that amending Section 141 of the Company Guide to increase the annual fee it charges issuers is reasonable because the resulting fees would better reflect the Exchange's costs related to such listing. In this regard, the Exchange notes that it will have been two years since it last increased the annual fee that it charges issuers, but that it continually enhances and upgrades the level of service it provides in the listings area, including with respect to technology, compliance and other regulatory matters related to listings. The Exchange's costs with respect to listings include, but are not limited to, rulemaking initiatives, listing administration processes, issuer services, and administration of other regulatory functions related to listing. Accordingly, the proposed fee increases set forth herein will enable the Exchange to ensure that it is providing a high standard of regulation and oversight of the market. The Exchange believes that the proposed increase in annual fees is equitably allocated because all issuers will be subject to the same $5,000 fee increase.

The Exchange believes it is reasonable to increase the fees that it charges an issuer that applies for (i) subsequent listing of additional shares (including the maximum fee) or (ii) changes that involve modifications to Exchange records. The Exchange notes that it has not increased these fees in many years, but that it devotes a significant amount of Exchange resources to reviewing and processing such applications. The Exchange further notes that the process to review subsequent listing applications is substantially the same on the New York Stock Exchange and the NYSE MKT. Because the process is substantially the same, the Exchange believes it is appropriate that the fees charged for this work are more closely aligned. While the Exchange proposes to increase the minimum fee to process a subsequent listing application on the New York Stock Exchange to $10,000, it believes it is appropriate to increase the minimum fee on the NYSE MKT to only $7,500 taking note of the fact that smaller companies are listed on the NYSE MKT and therefore to increase their fees to the same level as New York Stock Exchange listed companies would be disproportionately burdensome.

The Exchange believes that the proposed changes are equitable and not unfairly discriminatory because issuers in each tier will be subject to a $5,000 increase in their annual fee and the additional listing fee increases will apply equally to all issuers on the Exchange.

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 rule change is designed to ensure that the fees charged by the Exchange accurately reflect the services provided and benefits realized by listed companies. Issuers in each tier will be subject to a $5,000 increase in their annual fee and the additional listing fee increases will apply equally to all issuers on the Exchange, therefore such fee increases will be equitably allocated amongst all issuers and will not be unfairly discriminatory towards an individual issuer or class of issuers. Further, because issuers have the option to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee changes impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] 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)[10] 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–2014–79 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR–NYSEMKT–2014–79. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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–2014–79 and should be submitted on or before October 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23314 Filed 9–30–14; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73221; File No. SR–BYX–2014–023]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

September 25, 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 September 12, 2014, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 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 recently filed a proposed rule change to adopt a new routing option called ''RMPT''.[6] RMPT is a routing option under which a Mid-Point Peg Order[7] checks the System[8] for available shares and any remaining shares are then sent to destinations on the System routing table that support midpoint eligible orders.

The Exchange now proposes to modify its fee schedule to adopt fees applicable to the RMPT routing strategy. For orders routed pursuant to the RMPT routing strategy and executed on an away trading venue, the Exchange proposes to charge $0.0012 per share in securities priced at or above $1.00 and 0.29% of the total dollar value of the execution for securities priced below $1.00. The proposed fees are intended to approximate the cost for executions of midpoint orders on away trading venues.

The Exchange proposes to implement the amendments to its fee schedule effective immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change 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 of the Act.[9] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[10] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

The Exchange believes that the proposed changes to the Exchange's fee schedule to add fees for the RMPT routing strategy represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because they are in line with the fees charged for executions through other low-price routing strategies and approximate the cost to the Exchange of executing midpoint orders on away trading venues. Lastly, the Exchange notes that the use of the RMPT routing strategy is

[5] A Member is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[6] *See* SR–BYX–2014–021, filed on September 11, 2014, *available at http://www.batstrading.com/regulation/rule_filings/byx/.*

[7] Mid-Point Peg Orders are defined in Rule 11.9(c)(9).

[8] System is defined in Rule 1.5(aa).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

voluntary and believes that the proposed change is non-discriminatory because it applies uniformly to all Members.

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. Because the market for order execution is extremely competitive, Members may readily opt to disfavor the Exchange's routing services if they believe that alternatives offer them better value. For orders routed through the Exchange through the RMPT routing strategy the proposed fees are in line with the fees charged for executions through other low-price routing strategies and approximate the cost to the Exchange of executing midpoint orders on away trading venues. As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee structures to be unreasonable or excessive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f) of Rule 19b–4 thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–BYX–2014–023 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–BYX–2014–023. 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–BYX–2014–023, and should be submitted on or before October 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23316 Filed 9–30–14; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73217; File No. SR–EDGA–2014–20]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Relating To Include Additional Specificity Within Rule 1.5 and Chapter XI Regarding Current System Functionality Including the Operation of Order Types and Order Instructions

September 25, 2014.

On August 1, 2014, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') 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 amend Rule 1.5 and Chapter XI of its rule book to include additional specificity regarding the current functionality of the Exchange's System,[3] including the operation of its order types and order instructions, and to describe certain new system functionality. The proposed rule change was published for comment in the **Federal Register** on August 18, 2014.[4] The Commission received no comment letters.

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether these proposed rule changes should be disapproved. The 45th day for this filing is October 2, 2014.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Rule 1.5(cc) defines ''System'' as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.''

[4] *See* Securities Exchange Act Release No. 72812 (August 11, 2014), 79 FR 48823.

[5] 15 U.S.C. 78s(b)(2).

to consider and take action on the Exchange's proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act[6] and for the reasons stated above, the Commission designates November 14, 2014, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–EDGA–2014–20).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23313 Filed 9–30–14; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73214; File No. SR–CTA–2014–01]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of the Quote Meter Audit Late Fee Twentieth Charges Amendment to the Second Restatement of the Consolidated Tape Association Plan

September 25, 2014.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 608 thereunder,[2] notice is hereby given that on August 8, 2014, the Consolidated Tape Association ("CTA") Plan and participants ("Participants")[3] filed with the Securities and Exchange Commission ("Commission") a proposal to amend the Second Restatement of the CTA Plan (the "CTA Plan").[4] The proposal represents the twentieth charges amendment to the CTA Plan ("Twentieth Charges Amendment"), and reflects changes unanimously adopted by the Participants. The Twentieth Charges Amendment seeks to impose a late fee ("Late Fee") on a vendor or other data redistributor that fails to submit the results of the required audit of its quote meter system in a timely manner. Pursuant to Rule 608(b)(3) under Regulation NMS, the Participants designate the amendment as establishing or changing a fee or other charge collected on their behalf in connection with access to, or use of, the facilities contemplated by the CTA Plan. As a result, the amendment becomes effective upon filing with the Commission. The Commission is publishing this notice to solicit comments from interested persons on the proposed Late Fee amendment.

I. Rule 608(a)

A. Purpose of the Amendment

One of the payment options that the Participants make available to data redistributors is the per-query option. Currently, a data redistributor may pay $0.005 for every data query to which it responds.

The Participant's form of "Agreement for Receipt and Use of Market Data" requires each data redistributor that wishes to redistribute data on a per-query basis to periodically audit its quote-metering system. The Participants have required per-query vendors to periodically audit their quote meter systems since they first established the per-query payment option in the late 1990's. They have found that the audits are essential to assuring the accuracy of per-query counts and payments.

However, some data redistributors have been derelict in performing the audits or have been tardy in providing the Participants with reports of the results of the audits. These instances place administrative burdens on the network administrators and add cost to the payment-collection process.

The amendment seeks to compensate the Participants for the added administrative costs, to reduce the risk that the Participants will under-bill a data redistributor due to faulty quote meter counts, and to provide incentives for data redistributors to submit the results of their quote meter audits to the Participants in a timely manner. The amendment proposes to impose a Late Fee of $3,000 for each month a data redistributor falls behind in submitting the results of the required quote meter audit to the Participants. The Late Fee applies once a data redistributor fails to provide NYSE with its audit results on or prior to December 31 of a year in which an audit is required.

The Participants do not view the amendment as establishing a new revenue source. Rather, they hope it encourages all data redistributors to submit the results of their quote meter audits in a timely fashion. They hope that the Late Fee will motivate non-compliant, or late-complying, per-query data redistributors to adopt the same practices that the majority of per-query data redistributors follow.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of the Amendment

Pursuant to Rule 608(b)(3)(i) under Regulation NMS, the Participants have designated the proposed Late Fee as establishing or changing fees and are submitting the amendment for immediate effectiveness. The Participants anticipate commencing to impose the Late Fee on data redistributors that are required to submit audit reports during 2014, but fail to do so on or prior to December 31, 2014. Prior to then, the Participants will give notice of the Late Fee to data redistributors that provide per-query service.

D. Development and Implementation Phases

See Item I(C) above.

E. Analysis of Impact on Competition

The amendment will impose no burden on competition.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

The Participants have no written understandings or agreements relating to interpretation of the CTA Plan as a result of the amendment.

G. Approval by Sponsors in Accordance With Plan

In accordance with Section XII(b)(iii) of the CTA Plan, each of the Participants has approved the Late Fee.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

The Participants believe that the proposed Late Fee is fair and reasonable and provides for an equitable allocation

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] Each participant executed the proposed amendment. The Participants are: BATS Exchange, Inc., BATS–Y Exchange Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., Nasdaq Stock Market LLC, National Stock Exchange, New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (collectively, "Participants").

[4] *See* Securities Exchange Act Release No. 10787 (May 10, 1974), 39 FR 17799 (declaring the CTA Plan effective). The most recent restatement of the CTA Plan was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a "transaction reporting plan" under Rule 601 under the Act, 17 CFR 242.601, and a "national market system plan" under Rule 608 under the Act, 17 CFR 242.608.

of dues, fees, and other charges among vendors, data recipients and other persons using CTA Network A facilities. They intend that it will provide incentives for non-compliant (or late-complying) per-query data redistributors to conform to the same practices and requirements by which the majority of per-query data redistributors abide.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a)

A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan

Not applicable.

B. Reporting Requirements

Not applicable.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

D. Manner of Consolidation

Not applicable.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

Not applicable.

H. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Twentieth Charges Amendment to the CTA Plan 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–CTA–2014–01 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–CTA–2014–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the Twentieth Charges Amendment to the CTA Plan that are filed with the Commission, and all written communications relating to the Twentieth Charges Amendment to the CTA Plan 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 Twentieth Charges Amendment to the CTA Plan also will be available for inspection and copying at the principal office of the CTA. 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–CTA–2014–01 and should be submitted on or before October 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23311 Filed 9–30–14; 8:45 am]

BILLING CODE 8011–01–P

[5] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73211; File No. SR–MIAX–2014–30]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Options on Certain iShares ETFs

September 25, 2014.

I. Introduction

On June 17, 2014, Miami International Securities Exchange LLC (''MIAX'' or ''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 options on shares of the iShares MSCI Brazil Capped ETF, iShares MSCI Chile Capped ETF, iShares MSCI Peru Capped ETF, and iShares MSCI Spain Capped ETF (collectively ''iShares ETFs''). The proposed rule change was published for comment in the **Federal Register** on July 3, 2014.[3] No comments were received on the proposed rule change. On August 13, 2014, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed change, to October 1, 2014.[4] This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list for trading on the Exchange options on shares of the iShares ETFs. According to the Exchange, the iShares ETFs are registered pursuant to the Investment Company Act of 1940 as management investment companies designed to hold

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72492 (June 27, 2014), 79 FR 38099 (''Notice''). The Commission notes that MIAX also submitted a similar proposed rule change to list and trade options on shares of certain Market Vectors ETFs. *See* Securities Exchange Act Release No. 72777 (August 6, 2014), 79 FR 47165 (August 12, 2014) (MIAX–2014–39). The Commission is similarly instituting proceedings to determine whether to approve or disapprove that proposed rule change as well.

[4] *See* Securities Exchange Act Release No. 72835 (August 13, 2014), 79 FR 49140 (August 19, 2014).

a portfolio of securities that track the MSCI Brazil 25/50 Index (''Brazil Index''), which consists of stocks traded primarily on BM&FBOVESPA; MSCI Chile Investable Market Index (IMI) 25/50 (''Chile Index''), which consists of stocks traded primarily on the Santiago Stock Exchange (''SSE''); MSCI All Peru Capped Index (''Peru Index''), which consists of stocks traded primarily on Bolsa de Valores de Lima (''BVL''); and MSCI Spain 25/50 Index (''Spain Index''), which consists of stocks traded primarily on Bolsa de Madrid (''BME'').[5]

MIAX Rule 402 establishes the Exchange's initial listing standards for equity options (the ''Listing Standards'') that must be satisfied for the Exchange to list and trade options on the shares of open-end investment companies, such as the iShares ETFs.[6] Options on the iShares ETFs do not meet the Listing Standards. In particular, options on the iShares ETFs do not meet the requirement concerning the existence of a comprehensive surveillance sharing agreement (''CSSA'') between MIAX and its foreign counterpart.[7] Accordingly, the Exchange may not list and trade options on the iShares ETFs.

According to the Exchange, it has attempted, but not entered into, CSSAs with the applicable foreign markets. In its proposal, the Exchange requested that the Commission allow the listing and trading of options on shares of the iShares ETFs without a CSSA. Instead, the Exchange proposes to rely on agreements between the Commission and the applicable foreign regulators. Specifically, the Exchange cited to the agreements between the Commission and the Comissao de Valores Mobiliarios (''CVM''),[8] which has responsibility for the Brazilian exchanges and over-the-counter markets; the Superintendencia de Valores y Seguros de Chile (''SVS''),[9] which has the responsibility for the Chilean securities markets; and the Comision Nacional del Mercado de Valores (''CNMV''), which has the responsibility for the Spanish stock exchanges.[10] In addition, the Exchange noted that the Superintendencia del Mercado de Valores, which has responsibility for Peruvian stock exchanges, and the Commission are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding.

III. Proceedings To Determine Whether To Approve or Disapprove SR–MIAX–2014–30 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[11] 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, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[12] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the proposed rule change's consistency with Section 6(b)(5) of the Act,[13] which require that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposal is inconsistent with Section 6(b)(5)[14] or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which 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.[15]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by October 22, 2014. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 5, 2014. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposed rule change, in addition to any other comments they may wish to submit about the proposed rule change.

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–MIAX–2014–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2014–30. This file number should be included on the subject line if email is used. To help the Commission process and review your

[5] *See* Notice, *supra* note 3. Morgan Stanley Capital International Inc. (''MSCI'') created and maintains the Brazil Index, Chile Index, Peru Index, and Spain Index.

[6] MIAX Rule 402(i) provides the Listing Standards for shares or other securities (''Exchange-Traded Fund Shares'') that are traded on a national securities exchange and are defined as an ''NMS stock'' under Rule 600 of Regulation NMS.

[7] *See* MIAX Rule 402(i)(5)(ii)(B). This rule requires that ''component securities of an index or portfolio of securities on which the Exchange Traded Fund Shares are based for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index.''

[8] *See* Notice, *supra* note 3 (citing to MOU with the CVM dated as of July 24, 2012).

[9] *See* Notice, *supra* note 3 (citing to MOU with the SVS dated as of June 3, 1993).

[10] *See* Notice, *supra* note 3 (citing to MOU with the CNMV dated as of July 22, 2013).

[11] 15 U.S.C. 78s(b)(2)(B).

[12] *Id.* Section 19(b)(2)(B) of the Exchange Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *See id.*

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

[15] Section 19(b) (2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 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).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2014–30 and should be submitted on or before October 22, 2014. Rebuttal comments should be submitted by November 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23309 Filed 9–30–14; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73220; File No. SR–ICC–2014–13]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change To Provide for the Clearance of Additional Standard Emerging European and Middle Eastern Sovereign Single Names

September 25, 2014.

I. Introduction

On July 31, 2014, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICC–2014–13 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on August 15, 2014.[3] The Commission did not receive any comments on the proposed rule change.[4] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

ICC proposes to adopt rules that will provide the basis for ICC to clear additional credit default swap contracts. Specifically, ICC is proposing to amend Section 26D of its Rules to provide for the clearance of additional Standard Emerging Sovereign Single Name constituents of the CDX Emerging Markets Index (''SES Contracts''). Currently, ICC clears six SES Contracts: four Standard Latin America Sovereign Single Name constituents and two Standard Emerging European and Middle Eastern Sovereign Single Name constituents of the CDX Emerging Markets Index (the ''SEEME Contracts''). The proposed rule change would provide for the clearance of two additional SEEME Contracts: the Republic of Hungary and the Republic of South Africa.

ICC currently clears Series 14–21 of the CDX Emerging Markets Index. Of the CDX Emerging Markets Indices cleared by ICC, the Republic of Hungary is a constituent of the CDX Emerging Markets Index, Series 14–18, and the Republic of South Africa is a constituent of the CDX Emerging Markets Index, Series 14–21. These two additional SEEME Contracts would initially be offered on the 2014 ISDA Credit Derivatives Definitions. ICC states that the addition of these SEEME Contracts will allow market participants an increased ability to manage risk, by providing market participants the ability to offset related index positions.

These additional SEEME Contracts would have terms consistent with the other SEEME Contracts currently cleared by ICC and governed by Subchapter 26D of the ICC rules, namely the Russian Federation and the Republic of Turkey. Minor revisions to Subchapter 26D (Standard Emerging Sovereign (''SES'') Single Name) are proposed to provide for clearing the additional SEEME Contracts. Rule 26D–102 would be modified to include the Republic of Hungary and the Republic of South Africa in the list of specific Eligible SES Reference Entities to be cleared by ICC. ICC represents that the addition of these products would not require any changes to ICC's Risk Management Framework or other policies and procedures constituting rules within the meaning of the Act. ICC states that, in connection with the clearance of the new contracts, it will apply its existing margin and guaranty fund methodology, operational and managerial resources, settlement procedures and account structures, and default management policies and procedures, which, together, it believes will provide sufficient financial, operational, and managerial resources to support the clearing of the new contracts.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[5] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act[6] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest.

After careful review, the Commission finds that the proposed rule change is consistent with Section 17A of the Act[7] and the rules thereunder applicable to ICC. The proposed rule change will provide for clearing of additional SEEME Contracts, which are substantially similar to other SEEME Contracts cleared by ICC, and the new contracts will be cleared pursuant to ICC's existing clearing arrangements and related financial safeguards, protections and risk management framework, including policies and procedures. The Commission believes that the proposal is therefore consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 34–72802 (Aug.11, 2014), 79 FR 48280 (Aug. 15, 2014) (SR–ICC–2014–13).

[4] On August 18, 2014, ICC filed Amendment No. 1 to the proposed rule change. ICC withdrew Amendment No. 1 on August 21, 2014.

[5] 15 U.S.C. 78s(b)(2)(C).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1.

securities and funds in the custody or control of ICC, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[8]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[9] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–ICC–2014–13) be, and hereby is, approved.[11]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23315 Filed 9–30–14; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78s(b)(2).

[11] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

China Valves Technology, Inc.; Order of Suspension of Trading

September 29, 2014.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Valves Technology, Inc. (''CVVT'') because CVVT has not filed periodic reports with the Commission from the quarter ended March 31, 2012 to the present. In addition, in a Form 8–K/A filed on February 28, 2012, CVVT disclosed that its unaudited financial statements for the quarters ended March 31, 2011 and June 30, 2011, and its audited financial statements for the year ended September 30, 2011, could no longer be relied upon. CVVT has failed to issue restated financials for those periods as of the date of this order.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of CVVT.

Therefore, *it is ordered,* pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of CVVT is suspended for the period from 9:30 a.m. EDT, September 29, 2014, through 11:59 p.m. EDT, on October 10, 2014.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23465 Filed 9–29–14; 4:15 pm]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2014–0054]

Charging Standard Administrative Fees for Nonprogram-Related Information

AGENCY: Social Security Administration.

ACTION: Notice of updated schedule of standardized administrative fees.

SUMMARY: On August 22, 2012,[1] we announced in the **Federal Register** a schedule of standardized administrative fees we charge to the public. We charge these fees to recover our full costs when we provide information and related services for nonprogram purposes. We are announcing an update to the previously published schedule of standardized administrative fees.

The updated standard fee schedule is part of our continuing effort to standardize fees for nonprogram information requests. Standard fees provide consistency and ensure we recover the full cost of supplying information when we receive a request for a purpose not directly related to the administration of a program under the Social Security Act (Act).

SUPPLEMENTARY INFORMATION: Section 1106 of the Act and the Privacy Act[2] authorize the Commissioner of Social Security to promulgate regulations regarding agency records and information and to charge fees for providing information and related services. Our regulations and operating instructions identify when we will charge fees for information.[3] Under our regulations, whenever we determine a request for information is for any purpose not directly related to the administration of the Social Security programs, we require the requester to pay the full cost of providing the information.

New Information: We are required to review and update standardized administrative fees at least every two years to ensure that we recover the full cost of providing information for nonprogram purposes. Based on the most recent cost analysis, the following table provides the new schedule of standardized administrative fees per request:

Copying an Electronic Folder	$44
Copying a Paper Folder	79
Third Party Manual SSN Verification	27
Regional Office Certification[4]	98
Office of Central Operations Certification[5]	56
W2/W3 Requests	37
Record Extract	38

We will continue to evaluate all standard fees at least every two years to ensure we capture the full costs associated with providing information for nonprogram-related purposes. We will require advance payment of the standard fee by check, money order, or credit card. We will not accept cash. If we revise any of the standard fees, we will publish another notice in the **Federal Register**. For other nonprogram-related requests for information not addressed here or within the current schedule of standardized administrative fees, we will continue to charge fees calculated on a case-by-case basis to recover our full cost of supplying the information. We eliminated the letter forwarding service effective May 14, 2014.[6]

Additional Information

Additional information is available on our Web site at *http://socialsecurity.gov/pgm/business.htm* or by written request to: Social Security Administration, Office of Public Inquiries, Windsor Park Building, 6401 Security Boulevard, Baltimore, MD 21235.

DATES: The changes described above are effective for requests we receive on or after October 1, 2014.

FOR FURTHER INFORMATION CONTACT: Kristina Poist, Social Security Administration, Office of Finance, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 597–1977. For information on eligibility or filing for benefits, visit our Internet site, Social Security Online, at *http://socialsecurity.gov*, or call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

Dated: September 23, 2014.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

[FR Doc. 2014–23304 Filed 9–30–14; 8:45 am]

BILLING CODE 4191–02–P

[1] 77 FR 50757, Aug. 22, 2012.

[2] 42 U.S.C. 1306 and 5 U.S.C. 552a, respectively.

[3] See 20 CFR 402.170, 402.175; Program Operations Manual System (POMS) GN 03311.005.

[4] Requests received in a field office, regional office, or headquarters component.

[5] Requests received in the Office of Central Operations.

[6] 79 FR 21831, April 17, 2014.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments on Annual Review of Country Eligibility for Benefits under the African Growth and Opportunity Act in Calendar Year 2015

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and Request for Comments.

SUMMARY: The African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee (Subcommittee) is requesting written public comments for the annual review of the eligibility of sub-Saharan African countries to receive the benefits of the African Growth and Opportunity Act (AGOA). The Subcommittee will consider these comments in developing recommendations on AGOA country eligibility for calendar year 2015 for the President. Comments received related to the child labor criteria may also be considered by the Secretary of Labor in the preparation of the Department of Labor's report on child labor as required under section 412(c) of the Trade and Development Act of 2000. This notice identifies the eligibility criteria that must be considered under AGOA, and lists those sub-Saharan African countries that are currently eligible for the benefits of AGOA and those that were ineligible for such benefits in 2014.

DATES: To ensure consideration, public comments must be submitted to the Office of the U.S. Trade Representative (USTR) by October 25, 2014.

ADDRESSES: USTR strongly prefers electronic submissions made at *http://www.regulations.gov,* docket number USTR–2014–0018 See ''Requirements for Submission,'' below. If you are unable to make a submission at *www.regulations.gov,* please contact Yvonne Jamison, Trade Policy Staff Committee, at (202) 395–3475 to make other arrangements.

FOR FURTHER INFORMATION CONTACT: For procedural questions, please contact Yvonne Jamison, Office of the U.S. Trade Representative, 600 17th Street NW., Room F516, Washington, DC 20508, at (202) 395–3475. All other questions should be directed to Constance Hamilton, Deputy Assistant U.S. Trade Representative for Africa, Office of the U.S. Trade Representative, at (202) 395–9514.

SUPPLEMENTARY INFORMATION: AGOA (Title I of the Trade and Development Act of 2000, Pub. L. 106–200) (19 U.S.C. 3721 *et seq.*), as amended, authorizes the President to designate sub-Saharan African countries as beneficiaries eligible for duty-free treatment for certain additional products under the Generalized System of Preferences (GSP) (Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*) (1974 Act)), as well as for preferential treatment for certain textile and apparel articles.

The President may designate a sub-Saharan country as a beneficiary eligible for both the additional GSP benefits and the textile and apparel benefits of AGOA if he determines that the country meets the eligibility criteria set forth in: (1) section 104 of AGOA (19 U.S.C. 3703); and (2) section 502 of the 1974 Act (19 U.S.C. 2462).

Section 104 of AGOA includes requirements that the country has established or is making continual progress toward establishing, *inter alia:* a market-based economy; the rule of law, political pluralism, and the right to due process; the elimination of barriers to U.S. trade and investment; economic policies to reduce poverty; a system to combat corruption and bribery; and protection of internationally recognized worker rights. In addition, the country may not engage in activities that undermine U.S. national security or foreign policy interests or engage in gross violations of internationally recognized human rights. Please see section 104 of AGOA and section 502 of the 1974 Act for a complete list of AGOA eligibility criteria.

Section 506A of the 1974 Act requires that, if the President determines that a beneficiary sub-Saharan African country is not meeting the eligibility requirements, he must terminate the designation of the country as a beneficiary sub-Saharan African country. For 2014, 41 countries were designated as beneficiary sub-Saharan African countries. These countries, as well as the countries currently designated as ineligible, are listed below. Section 506A of the 1974 Act provides that the President shall monitor and review annually the progress of each sub-Saharan African country in meeting the foregoing eligibility criteria in order to determine whether each beneficiary sub-Saharan African country should continue to be eligible, and whether each sub-Saharan African country that is currently not a beneficiary sub-Saharan African country, should be designated as such a country.

The Subcommittee is seeking public comments in connection with the annual review of the eligibility of beneficiary sub-Saharan African countries for AGOA's benefits. The Subcommittee will consider any such comments in developing recommendations on country eligibility for the President. Comments related to the child labor criteria may also be considered by the Secretary of Labor in making the findings required under section 504 of the 1974 Act.

The following sub-Saharan African countries were designated as beneficiary sub-Saharan African countries in 2014:

Angola
Republic of Benin
Republic of Botswana
Burkina Faso
Burundi
Republic of Cabo Verde
Republic of Cameroon
Republic of Chad
Federal Islamic Republic of Comoros
Republic of Congo
Republic of Cote d'Ivoire
Republic of Djibouti
Ethiopia
Gabonese Republic
The Gambia
Republic of Ghana
Republic of Guinea
Republic of Kenya
Kingdom of Lesotho
Republic of Liberia
Republic of Madagascar
Republic of Malawi
Republic of Mali
Islamic Republic of Mauritania
Republic of Mauritius
Republic of Mozambique
Republic of Namibia
Republic of Niger
Federal Republic of Nigeria
Republic of Rwanda
Sao Tome & Principe
Republic of Senegal
Republic of Seychelles
Republic of Sierra Leone
Republic of South Africa
Republic of South Sudan
Kingdom of Swaziland
United Republic of Tanzania
Republic of Togo
Republic of Uganda
Republic of Zambia

The following sub-Saharan African countries were not designated as beneficiary sub-Saharan African countries in 2014:

Central African Republic
Democratic Republic of Congo
Republic of Equatorial Guinea
State of Eritrea
Republic of Guinea-Bissau
Somalia
Republic of Sudan
Republic of Zimbabwe

Requirements for Submissions: Comments must be submitted in English. To ensure the most timely and expeditious receipt and consideration of

petitions, USTR has arranged to accept on-line submissions via *http://www.regulations.gov.* To submit petitions via this site, enter docket number USTR–2014–0018 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''notice'' under ''Document Type'' on search-results page and click on the link entitled ''Submit a Comment.'' (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''Help'' at the top of the home page.)

The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a ''Type Comment'' field, or by attaching a document. USTR prefers comments to be submitted as attachments. When doing this, it is sufficient to type ''See attached'' in the ''Type Comment'' field. Submissions in Microsoft Word (.doc) or Adobe Acrobat (pdf) are preferred.

Persons wishing to file comments containing business confidential information must submit both a business confidential version and a public version. Persons submitting business confidential information should write ''See attached BC comments'' in the ''Type Comment'' field. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. Persons submitting a business confidential comment must also submit a separate public version of that comment with the business confidential information deleted. Persons should write ''See attached public version'' in the ''Type Comment'' field of the public submission. Submissions should not attach separate cover letters; rather, information that might appear in the cover letter should be included in the comments you submit. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments to a submission in the same file as the submission itself and not as separate files.

Public versions of all documents relating to this review will be available for review no later than two weeks after the due date at *www.regulations.gov,* docket number USTR–2014–0018.

Douglas Bell,

Chair, Trade Policy Staff Committee.

[FR Doc. 2014–23414 Filed 9–30–14; 8:45 am]

BILLING CODE 3290–F4–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0352]

Commercial Driver's License Standards: Application for Exemption; Recreation Vehicle Industry Association

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

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that the Recreation Vehicle Industry Association (RVIA) has requested a limited exemption from the Federal requirement to hold a commercial driver's license (CDL) for transporters of certain newly manufactured motorhomes and recreation vehicles (RVs) that are individually transported one at a time and are always empty. RVIA is requesting the exemption because compliance with the CDL requirements prevents its members from implementing more efficient and effective operations. The exemption would apply to individuals who are employees of U.S. driveaway-towaway companies, RV manufacturers, and RV dealers transporting RVs between the manufacturing site and dealer location and for movements prior to first retail sale. The exemption would apply when transporting RVs with an actual vehicle weight not exceeding 26,000 pounds, or a combination of RV trailer/tow vehicle with the actual weight of the towed unit not exceeding 10,000 pounds and the gross combined weight not exceeding 26,000 pounds. RV units that have a combined GVWR rating exceeding 26,000 pounds would not be covered by the exemption. RVIA believes that such a change would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption.

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

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2014–0352 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *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. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the *Public Participation* heading below. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov* at any time and in the box labeled ''SEARCH for'' enter FMCSA–2014–0352 and click on the tab labeled ''SEARCH.''

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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mrs. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and

determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

The Recreational Vehicle Industry Association (RVIA) is the national trade association representing recreational vehicle (RV) manufacturers and their component parts suppliers who together build more than 98 percent of all RVs produced in the United States. An RV is a vehicle designed as temporary living quarters for recreational, camping, travel and seasonal use. RVs may be motorized (motorhomes) or towable (travel trailers, fifth wheel trailers, folding camping trailers and truck campers).

The RVIA is requesting an exemption to the CDL requirements under 49 CFR 383.91(a)(1)–383.91(a)(2) when transporting RVs with an actual vehicle weight not exceeding 26,000 pounds, or a combination of RV trailer/tow vehicle with the actual weight of the towed unit not exceeding 10,000 pounds and the gross combined weight not exceeding 26,000 pounds. RV units that have a ship weight and combined GVWR rating exceeding 26,000 pounds would not be covered by the exemption. RVIA contends that compliance with the CDL rule prevents its members from implementing more efficient and effective operations. RVIA asserts that FMCSA should look at the actual weight of the RV when it is manifested as empty and should not require a CDL during the short time the RV is not loaded, does not carry freight and is transported from the factory where they are manufactured, or from a holding area to a dealership site.

In its application, RVIA contends that a shortage of drivers with CDLs is having a significant impact on the RV industry, which is just recovering from the 2008–2009 economic downturn. A large percentage of RV sales occur during the spring buying season. The jump in RV shipments trends stronger each month, thereafter increasing consistently from February through June. These excess units regularly accumulate in RV transporters' yards. It is in this period that there is insufficient commercial driver capacity for RV transportation. This commercial driver shortage, which is seasonal, creates delays in the delivery of product to consumers and potentially reduces the RV sales volume and the overall number of drivers employed by the RV industry. Consumers who wish to purchase an RV may have to wait weeks or months to receive delivery of their purchase because there are not enough drivers with CDLs to transport the vehicles from the factory to the dealership, especially since each RV must be individually transported. While these delays are costly and inconvenient to the RV industry and consumers, the greater costs result in potential lost sales from consumers who are unwilling to wait for their purchase.

RVIA states that the exemption would apply to individuals who are employees of U.S. driveaway-towaway companies, RV manufacturers, and RV dealers. RVIA contends that due to the class nature and the number of parties that will be affected thereby, it is not feasible or practicable to provide the names of individuals or transporters responsible for use or operation of these CMVs. RV units that have a ship weight and combined GVWR rating exceeding 26,000 pounds would not be covered by the exemption. RVIA asserts that exempting delivery for a subset of newly manufacturer RVs from the Class A and B CDL requirements would likely result in the level of safety equivalent to, or greater than, the level achieved without the exemption.

RVIA asserts that there is compelling evidence that safety records for RV transport companies delivering RVs from the manufacturers to dealers is and will continue to be better than the cited statistics in its application for drivers using RVs for recreational purposes if the requested exemption is granted.

RVIA contends that if the exemption is granted the level of safety associated with transportation of RVs from manufacturers to dealers is likely to be equivalent to, or greater than, the level of safety obtained by complying with the FMCSA regulation for the following reasons:

- On average, drivers employed by RV manufacturers and dealers to deliver RVs have substantially more experience operating RVs than an average driver operating an RV for recreational purposes.
- A thorough analysis using the FMCSA Safety Measurement System revealed that the majority of RV driveaway-towaway companies' accident frequency average of 0.234 recordable accidents per million miles traveled in 2012, is far less than the national average of 0.747 recordable accidents per million miles traveled that was used as a benchmark by the FMCSA in fiscal years 1994–1996 when developing criteria for ''Factor 6, Accident'' of the ''safety rating process.''
- FMCSA established an ''unsatisfactory rating'' threshold for all carriers operating outside of a 100 mile air radius with a recordable accident rate greater than 1.5 accidents per million miles traveled. Accordingly, RV driveaway-towaway accident frequency is approximately 640% less than the FMCSA unsatisfactory rating threshold for 2012, the most recent year for which data is available.
- Compared to drivers using RVs for recreational purposes, RV manufacturers and driveaway-towaway companies have substantially greater economic incentive to systematically train, monitor and evaluate their RV drivers with respect to safe operation of RVs because of substantially greater exposure to liability for any traffic accidents.
- As with any motor vehicle, newly manufactured RVs are much less likely to present a safety concern on account of mechanical failures.
- Travel distances between the manufacturing sites and dealer locations are on average much shorter than typical distances which RVs travel when in recreational use and the highway presence of RVs transported from manufacturers to dealers is negligible even during the peak spring delivery season.

RVIA asserts that without the exemption, one–time deliveries of new RVs with a GVWR exceeding 26,000 pounds or a GCWR exceeding 26,000 inclusive of a towed vehicle with a GVWR of 10,001 pounds or higher will continue to remain subject to CDL requirements and other FMCSA regulations even though end users of RVs purchasing them from dealers in the same states would not be subject to those requirements and regulations. This anomalous situation will continue to materially curb the growth of the RV industry without countervailing safety or other benefit to the public. In particular, RV manufacturers and dealers will continue to experience shortage of CDL operators during the busy spring season.

A copy of RVIA's application for exemption is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on RVIA's application for an exemption from the CDL requirements of 49 CFR part 383. The Agency will consider all comments received by close of business on October 31, 2014. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued On: September 24, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–23434 Filed 9–30–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0216]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 7 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition which is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce. The regulation and the associated advisory criteria published in the Code of Federal Regulations as the ''Instructions for Performing and Recording Physical Examinations'' have resulted in numerous drivers being prohibited from operating CMVs in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs for 2 years in interstate commerce.

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

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2014–0216 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316; January 17, 2008). This information is also available at *http://Docketinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Elaine Papp, Chief, Medical Programs Division, (202) 366–4001, or via email at *fmcsamedical@dot.gov,* or by letter FMCSA, Room W64–113, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 7 individuals listed in this notice have recently requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate CMVs in intrastate commerce. The advisory criteria indicate that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause which did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition, has no existing residual complications, and is not taking anti-seizure medication. Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a

history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission. To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2014–0216'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2014–0216'' and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Summary of Applications

Ronald J. Bland

Mr. Bland is a 51 year-old class A CDL holder in Ohio. He has a history of three possible seizures due to head trauma and has remained seizure free since 2008. He has taken anti-seizure medication since 2004 with the dosage and frequency remaining the same since 2009. If granted an exemption, he would like to drive a CMV. His physician states he is supportive of Mr. Bland receiving an exemption.

Joseph M. Celedonia

Mr. Celedonia is a 44 year-old driver in Maryland. He has a history of seizures and has remained seizure free since 1999. He takes anti-seizure medication with the dosage and frequency remaining the same since 2007. If granted an exemption, he would like to drive a CMV. His physician states he is supportive of Mr. Celedonia receiving an exemption.

Mathew J. Chizek

Mr. Chizek is a 35 year-old driver in Wisconsin. He has a history of seizures and has remained seizure free since 2004. He takes anti-seizure medication with the dosage and frequency remaining the same since 2008. If granted the exemption, he would like to drive a CMV. His physician states he is supportive of Mr. Chizek receiving an exemption.

Gregory B. Hardy

Mr. Hardy is a 54 year-old class B CDL holder in Massachusetts. He has a history of seizure and has remained seizure free since 1985. He takes anti-seizure medication with the dosage and frequency remaining the same since 2011. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Hardy receiving an exemption.

David A. Mitchell

Mr. Mitchell is a 48 year-old driver in Massachusetts. He has a history of a seizure disorder due to a frontal craniotomy for aneurysm repair and his last seizure was in 2010. He takes anti-seizure medication with a recent change in medication in February 2014. If granted the exemption, he would like to drive a CMV. He physician states that he is supportive of Mr. Mitchell receiving an exemption.

Thomas K. Mitchell

Mr. Mitchell is a 54 year-old class A CDL holder in Mississippi. He has a history of seizures and has remained seizure free since 1999. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Mitchell receiving an exemption.

Himat S. Sandhu

Mr. Sandhu is a 52 year-old driver in California. He has a history of a possible seizure after a surgical resection of an arteriovenous malformation. He does not require anti-seizure medication. His physician states that he is supportive of Mr. Sandhu receiving an exemption.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption applications described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: September 25, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–23439 Filed 9–30–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0089; FMCSA–2011–0389; FMCSA–2012–0050; FMCSA–2012–0094; FMCSA–2013–0106; FMCSA–2013–0108; FMCSA–2013–0109]

Denial of Exemption Applications; Epilepsy and Seizure Disorders

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

ACTION: Notice of denial of applications for seizure exemptions.

SUMMARY: FMCSA announces the denial of 24 individuals' applications for exemptions from the rule prohibiting persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce. The reason for each of the denials is listed after the individual's name.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, R.N., Chief of the Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statutes allow the Agency to renew exemptions at the end

of the 2-year period. The 24 individuals listed in this notice have requested an exemption from the epilepsy and seizure disorder standard in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is qualified physically to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In order to make an evidence-based decision, FMCSA conducted a comprehensive review of scientific literature and convened a panel of medical experts in the field of neurology to evaluate key questions regarding seizure and anti-seizure medication related to the safe operation of a CMV. In reaching the determination to grant or deny exemption requests for individuals who have experienced a seizure, the Agency considered both current medical literature and information and the 2007 recommendations of the Agency's Medical Expert Panel (MEP). Previously, the Agency gathered evidence for decision making concerning potential changes to the regulation by conducting a comprehensive review of scientific literature that was compiled into a report entitled, ''*Evidence Report on Seizure Disorders and Commercial Vehicle Driving*'' (*Evidence Report*) [CD–ROM HD TL230.3 .E95 2007]. The Agency then convened a MEP in the field of neurology on May 14–15, 2007, to review 49 CFR 391.41(b)(8) and the advisory criteria regarding individuals who have experienced a seizure and the 2007 Evidence Report. The *Evidence Report* and the MEP recommendations are published on-line at *http://www.fmcsa.dot.gov/rules-regulations/topics/mep/mep-reports.htm* under Seizure Disorders and are in the docket for this notice.

MEP Criteria for Evaluation

On October 15, 2007, the MEP issued the following recommended criteria for evaluating whether an individual with epilepsy or a seizure disorder should be allowed to operate a CMV.[1] The MEP recommendations are included in an appendix at the end of this notice and in each of the previously published dockets.

Epilepsy diagnosis. If there is an epilepsy diagnosis, the applicant should be seizure-free for 8 years, on or off medication. If the individual is taking anti-seizure medication(s), the plan for medication should be stable for 2 years. Stable means no changes in medication, dosage, or frequency of medication administration. Recertification for drivers with an epilepsy diagnosis should be performed every year.

Single unprovoked seizure. If there is a single unprovoked seizure (i.e., there is no known trigger for the seizure), the individual should be seizure-free for 4 years, on or off medication. If the individual is taking anti-seizure medication(s), the plan for medication should be stable for 2 years. Stable means no changes in medication, dosage, or frequency of medication administration. Recertification for drivers with a single unprovoked seizure should be performed every 2 years.

Single provoked seizure. If there is a single provoked seizure (i.e., there is a known reason for the seizure), the Agency should consider specific criteria that fall into the following two categories: Low-risk factors for recurrence and moderate-to-high risk factors for recurrence.

- *Examples of low-risk factors for recurrence* include seizures that were caused by a medication; by non-penetrating head injury with loss of consciousness less than or equal to 30 minutes; by a brief loss of consciousness not likely to recur while driving; by metabolic derangement not likely to recur; or by alcohol or illicit drug withdrawal.
- *Examples of moderate-to-high-risk factors for recurrence* include seizures caused by non-penetrating head injury with loss of consciousness or amnesia greater than 30 minutes or penetrating head injury; intracerebral hemorrhage associated with a stroke or trauma; infections; intracranial hemorrhage; post-operative complications from brain surgery with significant brain hemorrhage; brain tumor; or stroke.

The MEP report indicates that individuals with moderate to high-risk conditions should not be certified. Drivers with a history of a single provoked seizure with low risk factors for recurrence should be recertified every year.

Medical Review Board Recommendations and Agency Decision

FMCSA presented the MEP's findings and the Evidence Report to the Medical Review Board (MRB) for consideration. The MRB reviewed and considered the 2007 ''Seizure Disorders and Commercial Driver Safety'' evidence report and the 2007 MEP recommendations. The MRB recommended maintaining the current advisory criteria, which provide that ''drivers with a history of epilepsy/seizures off anti-seizure medication and seizure-free for 10 years may be qualified to drive a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5 year period or more'' [Advisory criteria to 49 CFR 391.43(f)].

The Agency acknowledges the MRB's position on the issue but believes current relevant medical evidence supports a less conservative approach. The medical advisory criteria for epilepsy and other seizure or loss of consciousness episodes was based on the 1988 ''Conference of Neurological Disorders and Commercial Driving'' (NITS Accession No. PB89–158950/AS). A copy of the report can be found in the docket referenced in this notice.

The MRB's recommendation treats all drivers who have experienced a seizure the same, regardless of individual medical conditions and circumstances. In addition, the recommendation to continue prohibiting drivers who are taking anti-seizure medication from operating a CMV in interstate commerce does not consider a driver's actual seizure history and time since the last seizure. The Agency has decided to use the 2007 MEP recommendations as the basis for evaluating applications for an exemption from the seizure regulation on an individual, case-by-case basis. The disposition of applications announced in this notice applies the 2007 MEP recommendations.

Denials and Reasons

- *The following driver was listed previously in* ***Federal Register*** Notice FMCSA–2011–0089 published April 05, 2011:

Darren Keith—Mr. Keith has a history of a seizure disorder. His last seizure was in 2009. He will have been seizure-free for 8 years, as required by the MEP guidelines, in 2017. He may reapply at that time.

- *The following drivers were listed previously in* ***Federal Register*** Notice FMCSA–2011–0389 published January 05, 2012:

Christopher Boddie—Mr. Boddie has a history of a seizure in 2011. He does not meet the exemption criteria at this time.

Roger Corvasce—We were unable to contact Mr. Corvasce by phone or mail to ascertain his status.

Michael Drake—Mr. Drake has a history of epilepsy. His last seizure was in 2009. He will have been seizure-free

[1] Engel, J., Fisher, R.S., Krauss, G.L., Krumholz, A., and Quigg, M.S., ''Expert Panel Recommendations: Seizure Disorders and Commercial Motor Vehicle Driver Safety,'' FMCSA, October 15, 2007.

for 8 years, as required by the MEP guidelines, in 2017. He may reapply at that time.

Virgil Godbey—We were unable to contact Mr. Godbey by phone or mail to ascertain his status.

Glen Hogan—Mr. Hogan withdrew his request for a seizure exemption.

Jordan Hyster—Mr. Hyster has a diagnosis of epilepsy, and his last seizure was 2009. He will have been seizure-free for 8 years, as required by the MEP guidelines, in 2017. He may reapply at that time.

Phillip McLain—Mr. McLain withdrew his request for a seizure exemption.

Mark Smith—Mr. Smith has a history of a seizure disorder. His last seizure was in 2010. He will have been seizure-free for 8 years, as required by the MEP guidelines, in 2018. He may reapply at that time.

Cheryl Woskie –We were unable to contact Ms. Woskie by phone mail to ascertain her status.

• *The following drivers were listed previously in* ***Federal Register*** *Notice FMCSA–2012–0050 published on February 29, 2012:*

Darren Carroll—Mr. Carroll has a history of a seizure in 2011. He does not meet the exemption criteria at this time.

Charles Johnson—Mr. Johnson has a history of a seizure disorder. His last seizure was in 2011. He will have been seizure-free for 8 years, as required by the MEP guidelines, in 2019.

He may reapply at that time.

• *The following drivers were listed previously in* ***Federal Register*** *Notice FMCSA–2012–0094 published on January 15, 2013:*

Sonja Cottle—Ms. Cottle does not require an exemption from the epilepsy and seizure standard because she does not have a history of seizure and is not taking anti-seizure medication.

Jeffrey Davis—Mr. Davis has a history of a seizure in 2011. He does not meet the exemption criteria at this time.

Juan Flores—Mr. Flores has a history of a seizure disorder. His last seizure was in 2011. He will have been seizure-free for 8 years, as required by the MEP guidelines, in 2019. He may reapply at that time.

Glenn Gervais—Mr. Gervais has a history of a seizure in 2011. He does not meet the exemption criteria at this time.

Daryl Goodman—We were unable to contact Mr. Goodman by phone or mail to ascertain his status.

Gary Osley—We were unable to contact Mr. Osley by phone or mail to ascertain his status.

• *The following driver was listed previously in* ***Federal Register*** *Notice FMCSA–2013–0106 published on April 24, 2013:*

James Kivett – Mr. Kivett has a history of a seizure in 2011. He does not meet the exemption criteria at this time.

• *The following driver was listed previously in* ***Federal Register*** *Notice FMCSA–2013–0108 published on September 16, 2013:*

Paul Kane—Mr. Kane has a diagnosis of epilepsy, and his last seizure was 2009. He will have been seizure-free for 8 years, as required by the MEP guidelines, in 2017. He may reapply at that time.

• *The following drivers were listed previously in* ***Federal Register*** *Notice FMCSA–2013–0109 published on November 13, 2013:*

Montie Bullis—Mr. Bullis has a diagnosis of a seizure disorder, and his last seizure was in 2009. He will have been seizure-free for 8 years, as required by the MEP guidelines, in 2017. He may reapply at that time.

Rick Cote—Mr. Cote has a diagnosis of epilepsy, and his last seizure was in 2009. He will have been seizure-free for 8 years, as required by the MEP guidelines, in 2017. He may reapply at that time.

Barry Von Gulner—Mr. Von Gulner has a diagnosis of probable epilepsy, and his last seizure was in 2008. He will have been seizure-free for 8 years, as required by the MEP guidelines, in 2016. He may reapply at that time.

John Welch—Mr. Welch has a diagnosis of epilepsy, and his last seizure was in 2000. He discontinued his anti-seizure medication in 2009. He will have been stable, off of anti-seizure medication for 8 years, as required by the MEP guidelines, in 2017.

Issued On: September 23, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–23437 Filed 9–30–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–15268; FMCSA–2008–0106; FMCSA–2008–0231; FMCSA–2010–0050; FMCSA–2010–0161; FMCSA–2012–0161; FMCSA–2012–0215; FMCSA–2012–0216]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 14 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective October 31, 2014. Comments must be received on or before October 31, 2014.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2003–15268; FMCSA–2008–0106; FMCSA–2008–0231; FMCSA–2010–0050; FMCSA–2010–0161; FMCSA–2012–0161; FMCSA–2012–0215; FMCSA–2012–0216], using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement

page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, R.N., Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

II. Exemption Decision

This notice addresses 14 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 14 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Calvin D. Bills (VA)
Donald L. Blakeley II (NV)
Edward A. Egy (OH)
Eric M. Giddens, Sr. (DE)
Roger S. Hardin (AL)
John H. Holmberg (WI)
Jesse P. Jamison (TN)
Matthew J. Mantooth (KY)
James G. Mitchell (AL)
James J. Monticello (IN)
Jason N. Moore (VA)
Steven R. Smith (ID)
Scott E. Tussey (KY)
Michael J. Wells (NC)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 14 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (68 FR 37197; 68 FR 48989; 70 FR 42615; 72 FR 54971; 73 FR 35197; 73 FR 35198; 73 FR 46973; 73 FR 48275; 73 FR 54888; 74 FR 64125; 75 FR 14658; 75 FR 28684; 75 FR 39725; 75 FR 44051; 75 FR 52062; 75 FR 52063; 75 FR 61833; 75 FR 64396; 77 FR 36338; 77 FR 40945; 77 FR 41879; 77 FR 46153; 77 FR 52381; 77 FR 52388; 77 FR 52389; 77 FR 52391; 77 FR 56261; 77 FR 56262; 77 FR 64582; 77 FR 64841; 77 FR 65933). Each of these 14 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

IV. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2003–15268; FMCSA–2008–0106; FMCSA–2008–0231; FMCSA–2010–0050; FMCSA–2010–0161; FMCSA–2012–0161; FMCSA–2012–0215; FMCSA–2012–0216), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and put the docket number, ''FMCSA–2003–15268; FMCSA–2008–0106; FMCSA–2008–0231; FMCSA–2010–0050; FMCSA–2010–0161; FMCSA–2012–0161; FMCSA–2012–0215; FMCSA–2012–0216'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and in the search box insert the docket number, ''FMCSA–2003–15268; FMCSA–2008–0106; FMCSA–2008–0231; FMCSA–

2010–0050; FMCSA–2010–0161; FMCSA–2012–0161; FMCSA–2012–0215; FMCSA–2012–0216'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button, choose the document listed to review. 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 DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: September 25, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–23436 Filed 9–30–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–3637; FMCSA–2000–7006; FMCSA–2000–7165; FMCSA–2000–8203; FMCSA–2002–12294; FMCSA–2004–17984; FMCSA–2004–18885; FMCSA–2012–0215]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 10 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective November 9, 2014. Comments must be received on or before October 31, 2014.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–1998–3637; FMCSA–2000–7006; FMCSA–2000–7165; FMCSA–2000–8203; FMCSA–2002–12294; FMCSA–2004–17984; FMCSA–2004–18885; FMCSA–2012–0215], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, R.N., Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

II. Exemption Decision

This notice addresses 10 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 10 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

John W. Arnold (KY)
Richard B. Eckert (NY)
Gary R. Evans (CT)
Harlan L. Gunter (VA)
David M. Hagadorn (NJ)
Andrew F. Hill (TX)
Danny E. Hillier (ND)
Garry R. Setters (KY)
Jimmy E. Settle (MO)
Hubert Whittenburg (MO)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 10 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 196; 63 FR 30285; 65 FR 20245; 65 FR 33406; 65 FR 57230; 65 FR 57234; 65 FR 66293; 67 FR 46016; 67 FR 57266; 67 FR 57267; 67 FR 67234; 69 FR 33997; 69 FR 52741; 69 FR 53493; 69 FR 61292; 69 FR 62741; 69 FR 62742; 71 FR 53489; 71 FR 55820; 71 FR 62147; 71 FR 62148; 73 FR 51336; 73 FR 61925; 73 FR 74565; 75 FR 52061; 75 FR 59327; 75 FR 66423; 77 FR 52381; 77 FR 64841; 77 FR 68199). Each of these 10 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

IV. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–1998–3637; FMCSA–2000–7006; FMCSA–2000–7165; FMCSA–2000–8203; FMCSA–2002–12294; FMCSA–2004–17984; FMCSA–2004–18885; FMCSA–2012–0215), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, got to *http://www.regulations.gov* and put the docket number, ''FMCSA–1998–3637; FMCSA–2000–7006; FMCSA–2000–7165; FMCSA–2000–8203; FMCSA–2002–12294; FMCSA–2004–17984; FMCSA–2004–18885; FMCSA–2012–0215'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and in the search box insert the docket number, ''FMCSA–1998–3637; FMCSA–2000–7006; FMCSA–2000–7165; FMCSA–2000–8203; FMCSA–2002–12294; FMCSA–2004–17984; FMCSA–2004–18885; FMCSA–2012–0215'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button choose the document listed to review. 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 DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: September 25, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–23440 Filed 9–30–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0306]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemptions request for comments.

SUMMARY: FMCSA announces receipt of applications from 37 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

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

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2014–0306 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. 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 for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want

acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, R.N., Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 37 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Noe D. Aguilar

Mr. Aguilar, 50, has had ITDM since 2014. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Aguilar understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Aguilar meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from California.

Paul W. Albert

Mr. Albert, 67, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Albert understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Albert meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Wyoming.

David N. Banks

Mr. Banks, 54, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Banks understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Banks meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Carolina.

Wayne W. Best

Mr. Best, 67, has had ITDM since 1999. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Best understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Best meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Gregory K. Blythe

Mr. Blythe, 65, has had ITDM since 1991. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Blythe understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Blythe meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Justin M. Brown

Mr. Brown, 33, has had ITDM since 2011. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brown understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Montana.

Richard E. Cole

Mr. Cole, 57, has had ITDM since 2004. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or

more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cole understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cole meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Michael W. Cooley

Mr. Cooley, 32, has had ITDM since 2009. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cooley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cooley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Kansas.

Steven R. Everly

Mr. Everly, 63, has had ITDM since 1999. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Everly understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Everly meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Clayton G. Hardwick

Mr. Hardwick, 61, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hardwick understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hardwick meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kentucky.

Audie C. Holton

Mr. Holton, 30, has had ITDM since 2010. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Holton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Holton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

John F. Kincaid

Mr. Kincaid, 72, has had ITDM since 2011. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kincaid understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kincaid meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Jerry E. King

Mr. King, 62, has had ITDM since 1982. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. King understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. King meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Minnesota.

Craig T. LaPresti

Mr. LaPresti, 42, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. LaPresti understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. LaPresti meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Lester M. Lee, Jr.

Mr. Lee, 57, has had ITDM since 2006. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lee understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lee meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Georgia.

Aretha Lewis

Ms. Lewis, 42, has had ITDM since 2005. Her endocrinologist examined her

in 2013 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Lewis understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Lewis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2013 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from Virginia.

Marvin D. Mathis

Mr. Mathis, 71, has had ITDM since 2009. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mathis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mathis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

Brian M. McFadden

Mr. McFadden, 51, has had ITDM since 2002. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McFadden understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McFadden meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Danny D. Miracle

Mr. Miracle, 60, has had ITDM since 2008. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Miracle understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miracle meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable non-proliferative diabetic retinopathy. He holds a Class A CDL from Indiana.

Patrick J. Miraflor

Mr. Miraflor, 51, has had ITDM since 2014. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Miraflor understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miraflor meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Sean K. Myhand

Mr. Myhand, 39, has had ITDM since 1999. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Myhand understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Myhand meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Georgia.

Glen R. Parry

Mr. Parry, 26, has had ITDM since 2012. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Parry understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Parry meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Mexico.

George E. Patton

Mr. Patton, 58, has had ITDM since 2007. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Patton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Patton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable non-proliferative diabetic retinopathy. He holds a Class A CDL from Alabama.

Michael J. Ramey

Mr. Ramey, 38, has had ITDM since 2014. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ramey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Ramey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Colorado.

Richard J. Rasmussen

Mr. Rasmussen, 54, has had ITDM since 2011. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rasmussen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rasmussen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable non-proliferative diabetic retinopathy. He holds a Class A CDL from Nebraska.

Mark L. Rigby

Mr. Rigby, 60, has had ITDM since 1989. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rigby understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rigby meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Utah.

Jeffrey K. Roberts

Mr. Roberts, 57, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Roberts understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Roberts meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Eric R. Storm

Mr. Storm, 40, has had ITDM since 1983. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Storm understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Storm meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Georgia.

Daniel A. Swain

Mr. Swain, 49, has had ITDM since 2010. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Swain understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Swain meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Sean P. Thomas

Mr. Thomas, 22, has had ITDM since 2012. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Thomas understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Thomas meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

Glenn R. Tyrrell

Mr. Tyrrell, 41, has had ITDM since 1982. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Tyrrell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tyrrell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

Lewis W. Vaught, Jr.

Mr. Vaught, 39, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Vaught understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Vaught meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

Michael S. Waitkus

Mr. Waitkus, 46, has had ITDM since 2008. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or

resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Waitkus understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Waitkus meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

William L. Wiltrout

Mr. Wiltrout, 74, has had ITDM since 1995. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wiltrout understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wiltrout meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

David T. Zilm

Mr. Zilm, 53, has had ITDM since 2011. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Zilm understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Zilm meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Tina L. Zimmer

Ms. Zimmer, 34, has had ITDM since 1993. Her endocrinologist examined her in 2013 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Zimmer understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Zimmer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2013 and certified that she does not have diabetic retinopathy. She holds an operator's license from Illinois.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2014–0306 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, to submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2014–0306 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

Issued on: September 25, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–23441 Filed 9–30–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0201]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 8 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective November 9, 2014. Comments must be received on or before October 31, 2014.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2010–0201], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, R.N., Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

II. Exemption Decision

This notice addresses 8 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 8 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

James B. Bierschbach (MN)
John P. Catalano (NJ)
Tyron O. Friese (MN)
Mark E. Lapp (PA)
David S. Matheny (WA)
Ronald B. Shafer (MI)
Thomas M. Sharp (ME)
Earl L. White, Jr. (NH)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 8 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (75 FR 54958; 75 FR 70078; 77 FR 68200). Each of these 8 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive

safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

IV. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2010–0201), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, got to *http://www.regulations.gov* and put the docket number, ''FMCSA–2010–0201'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and in the search box insert the docket number, ''FMCSA–2010–0201'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button choose the document listed to review. 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 DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: September 25, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–23438 Filed 9–30–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0442; FMCSA–2013–0443; FMCSA–2013–0444; FMCSA–2013–0445; FMCSA–2014–0212]

Denial of Exemption Applications; Epilepsy and Seizure Disorders

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

ACTION: Notice of denial of applications for seizure exemptions.

SUMMARY: FMCSA announces the denial of 19 individuals' applications for exemptions from the rule prohibiting persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce. The reason for each of the denials is listed after the individual's name.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, R.N., Chief of the Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statutes allow the Agency to renew exemptions at the end of the 2-year period. The 19 individuals listed in this notice have requested an exemption from the epilepsy and seizure disorder standard in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is qualified physically to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In order to make an evidence-based decision, FMCSA conducted a comprehensive review of scientific literature and convened a panel of medical experts in the field of neurology to evaluate key questions regarding seizure and anti-seizure medication related to the safe operation of a CMV. Previously, the Agency gathered evidence for decision making concerning potential changes to the regulation by conducting a comprehensive review of scientific literature that was compiled into a report entitled, ''*Evidence Report on Seizure Disorders and Commercial Vehicle Driving*'' (*Evidence Report*) [CD–ROM HD TL230.3 .E95 2007]. The Agency then convened a MEP in the field of neurology on May 14–15, 2007, to review 49 CFR 391.41(b)(8) and the advisory criteria regarding individuals who have experienced a seizure and the 2007 Evidence Report. The *Evidence Report* and the MEP recommendations are published on-line at *http://www.fmcsa.dot.gov/rules-regulations/topics/mep/mep-reports.htm* under Seizure Disorders and are in the docket for this notice. In reaching the determination to grant or deny exemption requests for individuals who have experienced a seizure, the Agency considered both current medical literature and information and the 2007 recommendations of the Agency's Medical Expert Panel (MEP).

MEP Criteria for Evaluation

On October 15, 2007, the MEP issued the following recommended criteria for evaluating whether an individual with epilepsy or a seizure disorder should be allowed to operate a CMV.[1] The MEP recommendations are included in an appendix at the end of this notice and in each of the previously published dockets.

Epilepsy diagnosis. If there is an epilepsy diagnosis, the applicant should be seizure-free for 8 years, on or off medication. If the individual is taking anti-seizure medication(s), the plan for medication should be stable for 2 years. Stable means no changes in medication, dosage, or frequency of medication administration. Recertification for

[1] Engel, J., Fisher, R.S., Krauss, G.L., Krumholz, A., and Quigg, M.S., ''Expert Panel Recommendations: Seizure Disorders and Commercial Motor Vehicle Driver Safety,'' FMCSA, October 15, 2007.

drivers with an epilepsy diagnosis should be performed every year.

Single unprovoked seizure. If there is a single unprovoked seizure (i.e., there is no known trigger for the seizure), the individual should be seizure-free for 4 years, on or off medication. If the individual is taking anti-seizure medication(s), the plan for medication should be stable for 2 years. Stable means no changes in medication, dosage, or frequency of medication administration. Recertification for drivers with a single unprovoked seizure should be performed every 2 years.

Single provoked seizure. If there is a single provoked seizure (i.e., there is a known reason for the seizure), the Agency should consider specific criteria that fall into the following two categories: low-risk factors for recurrence and moderate-to-high risk factors for recurrence.

• *Examples of low-risk factors for recurrence* include seizures that were caused by a medication; by non-penetrating head injury with loss of consciousness less than or equal to 30 minutes; by a brief loss of consciousness not likely to recur while driving; by metabolic derangement not likely to recur; or by alcohol or illicit drug withdrawal.

• *Examples of moderate-to-high-risk factors for recurrence* include seizures caused by non-penetrating head injury with loss of consciousness or amnesia greater than 30 minutes or penetrating head injury; intracerebral hemorrhage associated with a stroke or trauma; infections; intracranial hemorrhage; post-operative complications from brain surgery with significant brain hemorrhage; brain tumor; or stroke.

The MEP report indicates that individuals with moderate to high-risk conditions should not be certified. Drivers with a history of a single provoked seizure with low risk factors for recurrence should be recertified every year.

Medical Review Board Recommendations and Agency Decision

FMCSA presented the MEP's findings and the Evidence Report to the Medical Review Board (MRB) for consideration. The MRB reviewed and considered the 2007 ''Seizure Disorders and Commercial Driver Safety'' evidence report and the 2007 MEP recommendations. The MRB recommended maintaining the current advisory criteria, which provide that ''drivers with a history of epilepsy/seizures off anti-seizure medication and seizure-free for 10 years may be qualified to drive a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5 year period or more'' [Advisory criteria to 49 CFR 391.43(f)].

The Agency acknowledges the MRB's position on the issue but believes current relevant medical evidence supports a less conservative approach. The medical advisory criteria for epilepsy and other seizure or loss of consciousness episodes was based on the 1988 ''Conference of Neurological Disorders and Commercial Driving'' (NITS Accession No. PB89–158950/AS). A copy of the report can be found in the docket referenced in this notice.

The MRB's recommendation treats all drivers who have experienced a seizure the same, regardless of individual medical conditions and circumstances. In addition, the recommendation to continue prohibiting drivers who are taking anti-seizure medication from operating a CMV in interstate commerce does not consider a driver's actual seizure history and time since the last seizure. The Agency has decided to use the 2007 MEP recommendations as the basis for evaluating applications for an exemption from the seizure regulation on an individual, case-by-case basis. The disposition of applications announced in this notice applies the 2007 MEP recommendations.

Denials and Reasons

• The following drivers were listed previously in **Federal Register** Notice FMCSA–2013–0442 published February 25, 2014:

Barry Cultice—Mr. Cultice has a history of a seizure disorder. His last seizure was in 2006. He did not provide sufficient information to make a determination.

Arnold Gatison—Mr. Gatison has a history of seizure disorder. His last seizure was in 2009. He does not meet the MEP guidelines at this time.

Michael Hines—Mr. Hines has a history of epilepsy. His last seizure was in 2008, however, his physician states that he fell asleep while driving in 2013, and the cause is indeterminate. He does not meet the MEP guidelines at this time.

Shawn Mion—Mr. Mion has no history of seizure. He was taking an anti-seizure medication for a medical condition other than seizures. Mr. Mion withdrew his request for a seizure exemption because he was placed on a new medication.

Douglas Norland—Mr. Norland has a history of seizure disorder. His last seizure was in 1989. His last change in anti-seizure medication was in January 2013. He does not meet the MEP guidelines at this time.

• The following drivers were listed previously in **Federal Register** Notice FMCSA–2013–0443 published March 21, 2014:

Christopher Fitch—Mr. Fitch has a history of a single seizure in 2013. He takes anti-seizure medication. He does not meet the exemption criteria at this time.

Earnest Lansberry—Mr. Lansberry has a history of epilepsy. His last seizure was in 2007. He does not meet the MEP guidelines at this time.

Jason Yowell—Mr. Yowell has a history of a single seizure. His seizure was in 2011. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

• The following drivers were listed previously in **Federal Register** Notice FMCSA–2013–0444 published on May 13, 2014:

Mark Dodson—Mr. Dodson has a history of a single seizure. His seizure was in 2011. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Paul Seekins—Mr. Seekins has a history of seizure disorder. This last seizure was in 2013. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

• The following drivers were listed previously in **Federal Register** Notice FMCSA–2013–0445 published on June 3, 2014:

Raymond Berns—Mr. Berns has a history of epilepsy. His last seizure was July 2007. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Christopher Dodson—Mr. Dodson has a history of seizure disorder. His last seizure was in 2010. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Wayne Guthrie—Mr. Guthrie has a history of epilepsy. His last seizure was in 2011. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Patricia Morgan—Mr. Morgan does not intend to operate in interstate commerce.

Jerrod Rust—Mr. Rust has a history of epilepsy. His last seizure was in 2012. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Walter Siwula—Mr. Siwula has a history of seizure disorder. His last seizure was in 2009. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

• The following drivers were listed previously in **Federal Register** Notice

FMCSA–2014–0212 published on July 8, 2014:

Charles Barnett—Mr. Barnett has a history of seizures. His last seizure was in 2011. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

James Boyd—Mr. Boyd has a history of a single seizure. His seizure was in 2011. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Joaquin Polin—Mr. Polin has a history of epilepsy. His last seizure was in 2010. He takes anti-seizure medication. He does not meet the MEP guidelines at this time.

Issued on: September 26, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–23442 Filed 9–30–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects; Correction

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice; correction.

SUMMARY: The Federal Transit Administration (FTA) published a notice in the **Federal Register** on September 16, 2014, concerning a limitation on claims for certain specified public transportation projects. The prior notice contained an error regarding one of the project descriptions. This notice serves to correct the error.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353–2577 or Terence Plaskon, Environmental Protection Specialist, Office of Planning and Environment, (202) 366–0442. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9:00 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays.

Correction: In the **Federal Register** notice dated September 16, 2014, FR Doc. 2014–22065, on page 55528, in the third column, the Vasona Corridor Light Rail Transit Extension Project was incorrectly described as extending the existing line *11.6* miles from the existing Winchester Station to a new Vasona Junction Station. A corrected description should read:

Project description: The FTA issued a Record of Decision (ROD) for the Vasona Corridor Light Rail Transit (LRT) project in June 2000. Construction between downtown San Jose and Winchester Station in Campbell began in 2001. Passenger service started in 2005. The southernmost portion of the project between the Winchester Station and the Vasona Junction Station in Los Gatos was not constructed due to insufficient funding. The Vasona Corridor LRT Extension Project would complete the line as originally planned by extending the existing line *1.6* miles from the existing Winchester Station to a new Vasona Junction Station. The extension includes constructing a double set of LRT tracks; lengthening the six existing station platforms along the Vasona Corridor to accommodate longer train sets; increasing parking capacity and improving pedestrian access at Winchester Station; constructing a new Hacienda Station with an optional park-and-ride lot; a new Vasona Junction Station with a park-and-ride lot, as well as end-of-the-line facilities.

This notice serves to revise the prior project description. This notice does not affect the FTA's previous decisions for this project. The correction does not alter the statute of limitations (SOL) for modifications to the Vasona Corridor Light Rail Transit Extension Project previously noticed on September 16, 2014, and described above. The SOL on claims will still expire on February 13, 2015.

Issued on: September 24, 2014.

Lucy Garliauskas,

Associate Administrator for Planning and Environment.

[FR Doc. 2014–23344 Filed 9–30–14; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

List of Delayed Special Permit Applications

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 51I7(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of special permit applications

Meaning of Application Number Suffixes

N—New application
M—Modification request
R—Renewal Request
P—Party To Exemption Request

Issued in Washington, DC, on September 5, 2014.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Applicant	Reason for delay	Estimated date of completion
	Modification to Special Permits		
15642–M	Praxair Distribution, Inc., Danbury, CT	4	09–30–2014
9847–M	FIBA Technologies, Inc. (FIBA), Millbury, MA	4	09–30–2014
15806–M	Precision Technik, Atlanta, GA	4	09–30–2014
15832–M	Baker Petrolite Corporation (BPC), Sugar Land, TX	4	09–30–2014
9610–M	ATK Small Caliber Systems, Independece, MO	4	09–30–2014

Application No.	Applicant	Reason for delay	Estimated date of completion
	New Special Permit Applicatons		
15767–N	Union Pacific Railroad Company, Omaha, NE	1	09–30–2014
15977–N	NORA	4	09–30–2014
15973–N	Codman & Shurtleff, Inc., Raynham, MA	4	09–30–2014
15971–N	National Aeronautics and Space Administration (NASA), Houston, TX	4	09–30–2014
15955–N	Thompson Tank, Inc., Lakewood, CA	3	09–30–2014
16022–N	Zhejiang Juhua Equipment Manufacturing Co., Ltd., Quzhou, Zhejiang	4	09–30–2014
16013–N	Chem Technologies Ltd., Middlefield, OH	4	09–30–2014
1599–N	Dockweiler, Neustadt-Glewe, Germany	4	09–30–2014
16011–N	Americase, Waxahache, TX	4	09–30–2014
16001–N	VELTEK, Malvern, PA	4	09–30–2014
16039–N	UTLX Manufacturing LLC, Alexandria, LA	4	09–30–2014
16060–N	Daeryuk Can Manufacturing Co., Ltd, Youngin-Myeon, Asan-Si, Ch	4	09–30–2014
16103–N	Insituform Technologies, LLC, Chesterfield, MO	4	11–30–2014
16108–N	Carleton Technologies Inc., Westminster, MD	4	11–30–2014
16061–N	Battery Solutions, LLC, Howell, MI	4	09–30–2014
	Party to Special Permits Application		
13192–P	Custom Environmental Management Company, Inc., Hainesport, NJ	4	09–30–2014
	Renewal Special Permits Applications		
11602–R	East Tennessee Iron & Metal, Inc., Rogersville, TN	4	09–30–2014
11860–R	GATX Corporation, Chicago,IL	4	09–30–2014
15580–R	Wisconsin Central Ltd., Homewood, IL	4	09–30–2014

[FR Doc. 2014–23077 Filed 9–30–14; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35855]

Southwestern Railroad, Inc.—Lease and Operation Exemption—BNSF Railway Company

Southwestern Railroad, Inc. (SW), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to continue to lease and operate approximately 227.6 miles of rail line from BNSF Railway Company (BNSF), located in New Mexico, as follows: (1) On the Carlsbad Subdivision between milepost 0.5 at Clovis and milepost 183.0 at Carlsbad, (2) in the Carlsbad Yard,[1] (3) on the Carlsbad Industrial Spur between milepost 0.0 at Carlsbad and milepost 20.0 near Carlsbad, and (4) on the Loving Industrial Spur between milepost 0.0 at Carlsbad and milepost 20.0 at Loving.[2]

SW and BNSF entered into a lease agreement in 2004. Recently, the parties entered into a third amendment to the agreement which, among other things, extends the term of the lease to December 31, 2023.

SW has certified that its projected annual revenues as a result of this transaction will not result in SW's becoming a Class II or Class I rail carrier, but that its projected annual revenues will exceed $5 million. Accordingly, SW is required, at least 60 days before this exemption is to become effective, to send notice of the transaction to the national offices of the labor unions with employees on the affected lines, post a copy of the notice at the workplace of the employees on the affected lines, and certify to the Board that it has done so. 49 CFR 1150.42(e).

SW., concurrently with its notice of exemption, filed a petition for waiver of the 60-day advance labor notice requirement under § 1150.42(e), asserting that: (1) No BNSF employee will be affected because no BNSF employee has performed operations or maintenance on the line since 2004; and (2) no SW employee will be affected because SW will continue to provide the same service and perform the same maintenance as it has since 2004. SW's waiver request will be addressed in a separate decision.

SW states that it intends to consummate the transaction on or shortly after the effective date of this transaction. The Board will establish in the decision on the waiver request the earliest date this transaction may be consummated.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than October 8, 2014.

An original and 10 copies of all pleadings, referring to Docket No. FD 35855, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Ball Janik LLP, Suite 225, 655 Fifteenth St. NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: September 26, 2014.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2014–23379 Filed 9–30–14; 8:45 am]

BILLING CODE 4915–01–P

[1] SW states that there are no milepost designations associated with the 5.1-mile line of railroad located in the Carlsbad Yard.

[2] SW was granted authority to lease and operate the rail line in *Southwestern R.R. Company, Inc.—Lease and Oper. Exemption—BNSF Railway Co.,* FD 34533 (STB served Oct. 22, 2004).

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0760]

Proposed Information Collection Certification of United States Paralympics Training Status Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of National Veterans Sports Programs and Special Events (NVSPSE), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to ascertain the status of disabled Veterans that are participating the Paralympic Allowance Program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 1, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Joshua McCoy, NVSPSE (002C), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Joshua.mccoy2@va.gov.* Please refer to ''OMB Control No. 2900–0760'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: (NAME) at (202) 461–0456 or FAX (202) 495–5228.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certification of United States Paralympics Training Status.

OMB Control Number: 2900–0760.

Type of Review: Revision of a currently approved collection.

Abstract: Section 703 of the Veterans' Benefits Improvement Act of 2008, P.L. 110–389, authorizes the Department of Veterans Affairs (VA) to administer a monthly assistance allowance to a veteran with a service-connected or non service-connected disability if the veteran is competing for a slot on or selected for the United States Paralympics team or is residing at a United States Paralympics training center.

Affected Public: 100.

Estimated Annual Burden: 30 hours.

Estimated Average Burden Per Respondent: 25 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 100.

Dated: September 25, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23294 Filed 9–30–14; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 79 Wednesday,

No. 190 October 1, 2014

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for 21 Species and Proposed Threatened Status for 2 Species in Guam and the Commonwealth of the Northern Mariana Islands; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2014–0038: 4500030113]

RIN 1018–BA13

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for 21 Species and Proposed Threatened Status for 2 Species in Guam and the Commonwealth of the Northern Mariana Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list 21 plant and animal species from the Mariana Islands (the U.S. Territory of Guam and the U.S. Commonwealth of the Northern Mariana Islands) as endangered species under the Endangered Species Act of 1973, as amended. We also propose to list two plant species from the Mariana Islands in the U.S. Territory of Guam and the U.S. Commonwealth of the Northern Mariana Islands as threatened species under the Act. If we finalize this rule as proposed, it would extend the Act's protections to these 23 species. The effect of this regulation will be to add these 23 species to the Federal Lists of Endangered and Threatened Wildlife and Plants.

DATES: We will accept comments received or postmarked on or before December 1, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 17, 2014.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal:

http://www.regulations.gov. In the Search box, enter FWS–R1–ES–2014–0038, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By Hard Copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2014–0038; Division of Policy and Directives Management; U.S. Fish & Wildlife 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 *Public Comments* below for more information).

FOR FURTHER INFORMATION CONTACT: Loyal Mehrhoff, Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Honolulu, HI 96850; by telephone at 808–792–9400; or by facsimile at 808–792–9581. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act of 1973, as amended (Act), if a species is determined to be an endangered or threatened species throughout all or a significant portion of its range, we, the U.S. Fish and Wildlife Service (FWS), are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. Critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designations and revisions of critical habitat can only be completed by issuing a rule. We will address designation of critical habitat for these 23 species in a separate rule.

This rule will propose the listing of 23 species from the Mariana Islands as endangered or threatened species. Twenty-one of these species are proposed as endangered species (12 plants: *Bulbophyllum guamense* (cebello halumtano), *Dendrobium guamense* (no common name (NCN)), *Eugenia bryanii* (NCN), *Hedyotis megalantha* (paudedo), *Heritiera longipetiolata* (ufa-halumtano), *Maesa walkeri* (NCN), *Phyllanthus saffordii* (NCN), *Psychotria malaspinae* (aplokating-palaoan), *Solanum guamense* (berenghenas halomtano), *Nervilia jacksoniae* (NCN), *Tinospora homosepala* (NCN), and *Tuberolabium guamense* (NCN)); and 9 animals: the Pacific sheath-tailed bat (*Emballonura semicaudata rotensis;* liyang), Slevin's skink (*Emoia slevini;* guali'ek halomtano), the Mariana eight-spot butterfly (*Hypolimnas octocula mariannensis;* NCN), the Mariana wandering butterfly (*Vagrans egistina;* NCN), the Rota blue damselfly (*Ischnura luta;* NCN), the fragile tree snail (*Samoana fragilis;* akaleha), the Guam tree snail (*Partula radiolata;* akaleha), the humped tree snail (*Partula gibba;* akaleha), and Langford's tree snail (*Partula langfordi;* akaleha)). Two plant species (*Cycas micronesica* (fadang) and *Tabernaemontana rotensis* (NCN)) are proposed for listing as threatened species. Seven of these 23 species (1 bat, 2 butterflies, and 4 tree snails) are candidate species for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation had been previously precluded by other higher priority listing activities. This rule will reassess all available information regarding status of and threats to these seven species. Sixteen of the 23 species (14 plant species and 2 animal species (Slevin's skink and Rota damselfly)) are Mariana Islands species for which we have sufficient information on biological vulnerabilities and threats to propose for listing as endangered or threatened, but which have not been previously recognized as candidate species.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. As described in this document, these 23 species are experiencing population-level impacts as the result of the following current and ongoing threats:

- Habitat loss and degradation due to development, military activities, and urbanization; nonnative feral ungulates (hoofed mammals, for example, deer, pigs, and water buffalo) and nonnative plants; rats; snakes; wildfire; typhoons; water extraction, and climate change.
- Predation or herbivory by nonnative feral ungulates, rats, snakes, monitor lizards, slugs, flatworms, ants, and wasps.
- Inadequate existing regulatory mechanisms to prevent the introduction and spread of nonnative plants and animals.
- Ordnance and live-fire from military training, recreational vehicles,

and vulnerability to extinction due to small numbers of individuals and populations.

As a consequence of these threats, we propose to list 2 of these species as threatened species, and 21 of these species as endangered species. We, therefore, propose adding these 23 Mariana Islands species to the Federal Lists of Endangered and Threatened Wildlife and Plants.

We will seek peer review. We will seek comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment on our listing proposal. Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal.

Information Requested

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, including landowners, land managers, and residents of the U.S. Territory of Guam (Guam) and the U.S. Commonwealth of the Northern Mariana Islands (CNMI), the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The biology, range, and population trends of these species, including:

(a) Biological or ecological requirements, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for these species, their habitats, or both.

(2) Factors that may affect the continued existence of these species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of these species, including the locations of any additional populations of these species.

(5) Any information regarding the taxonomy of *Tinospora homosepala,* with particular regard to the question of whether *T. homosepala* may be the same species as the more common *T. glabra,* or is a variety of that species.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments **only** by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we have sought the expert opinions of 10 appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our listing determinations are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise about one or more of the 23 species' biology, habitat, life-history needs, and vulnerability to threats, which will inform our determination. We invite comment from the peer reviewers during this public comment period. A copy of our peer review plan is available for public review at *http://www.fws.gov/pacific/informationquality*.

Previous Federal Actions

Seven of the 23 species proposed for listing as endangered species are candidate species (77 FR 70103; November 22, 2013). Candidate species are those taxa for which the U.S. Fish and Wildlife Service (Service) has sufficient information on their biological status and threats to propose them for listing under the Act, but for which the development of a listing regulation has been precluded to date by other higher priority listing activities. The current candidate species addressed in this proposed listing rule include the following seven animal species: the Pacific sheath-tailed bat (*Emballonura semicaudata rotensis*), the Mariana eight-spot butterfly (*Hypolimnas octocula marianensis*), the Mariana wandering butterfly (*Vagrans egistina*), the fragile tree snail (*Samoana fragilis*), the Guam tree snail (*Partula radiolata*), the humped tree snail (*Partula gibba*), and Langford's tree snail (*Partula langfordi*). The candidate status of these species was most recently reaffirmed in the November 22, 2013, Review of Native Species that are Candidates for Listing as Endangered or Threatened (CNOR) (77 FR 70103).

On May 4, 2004, the Center for Biological Diversity petitioned the Secretary of the Interior to list 225 species of plants and animals, including the 7 candidate species listed above, as endangered or threatened under the provisions of the Act. Since then, we

have published our annual findings on the May 4, 2004, petition (including our findings on the seven candidate species listed above) in the CNORs dated May 11, 2005 (70 FR 24870), September 12, 2006 (71 FR 53756), December 6, 2007 (72 FR 69034), December 10, 2008 (73 FR 75176), November 9, 2009 (74 FR 57804), November 10, 2010 (75 FR 69222), October 26, 2011 (76 FR 66370), November 21, 2012 (77 FR 69994), and November 22, 2013 (77 FR 70103). This proposed rule constitutes a further response to the 2004 petition.

In addition to the 7 candidate species, we are proposing to list 16 additional species that occur in the Mariana Islands as endangered or threatened species, including 14 plants (*Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Eugenia bryanii, Hedyotis megalantha, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Psychotria malaspinae, Solanum guamense, Tabernaemontana rotensis, Tinospora homosepala,* and *Tuberolabium guamense*) and 2 animals (Slevin's skink (*Emoia slevini*) and the Rota blue damselfly (*Ischnura luta*)). Three of these plant species, *Heritiera longipetiolata, Maesa walkeri,* and *Psychotria malaspinae,* have been identified as the ''rarest of the rare'' Mariana plant species and in need of immediate conservation under the multiagency (Federal and Territorial) Guam Plant Extinction Prevention Program (GPEPP). The goal of GPEPP is to prevent the extinction of plant species that have fewer than 200 individuals remaining in the wild on the island of Guam (GPEPP 2014, in litt.). We believe these 14 plants and 2 animal species warrant listing under the Act for the reasons discussed in the ''Summary of Factors Affecting the Species'' section (below). Because these 16 species occur within 2 of the same ecosystems as the 7 candidate species, and share common threats with them, we have included them in this proposed rule to provide them with protection under the Act in an expeditious manner.

We will be publishing a proposal to address critical habitat for the 23 Mariana Islands species under the Act in the near future.

Background

Mariana Islands Species Addressed in this Proposed Rule

Table 1 below provides the scientific name, common name, listing status, and range (islands on which the species is found) for the 23 Mariana Islands species that are addressed in this proposed rule.

TABLE 1—THE 23 SPECIES ADDRESSED IN THIS PROPOSED RULE

Scientific name	Common name(s)	Listing status	Range
PLANTS			
Bulbophyllum guamense	cebello halumtano[Ch]	Proposed–Endangered.	Guam, Rota, Saipan (H), Pagan (H).
Cycas micronesica	fadang[Ch]	Proposed–Threatened	Guam, Rota, Pagan, Palau,* Yap.*
Dendrobium guamense	NCN	Proposed–Endangered.	Guam, Rota, Tinian (H), Saipan (H).
Eugenia bryanii	NCN	Proposed–Endangered.	Guam.
Hedyotis megalantha	paudedo[Ch]	Proposed–Endangered.	Guam.
Heritiera longipetiolata	ufa-halomtano[Ch]	Proposed–Endangered.	Guam, Saipan, Tinian, Rota (H).
Maesa walkeri	NCN	Proposed–Endangered.	Guam, Rota.
Nervilia jacksoniae	NCN	Proposed–Endangered.	Guam, Rota.
Phyllanthus saffordii	NCN	Proposed–Endangered.	Guam.
Psychotria malaspinae	aplokating-palaoan[Ch]	Proposed–Endangered.	Guam.
Solanum guamense	berenghenas halomtano[Ch].	Proposed–Endangered.	Guam, Rota (H), Tinian (H), Saipan (H), Asuncion (H), Guguan (H), Maug (H).
Tabernaemontana rotensis	NCN	Proposed–Threatened	Guam, Rota.
Tinospora homosepala	NCN	Proposed–Endangered.	Guam.
Tuberolabium guamense	NCN	Proposed–Endangered.	Guam, Rota, Aguiguan (H), Tinian (H).
ANIMALS			
Emballonura semicaudata rotensis	Pacific sheath-tailed bat, liyang[Ch], payesyes[Ca], pai scheei[Cl].	Proposed–Endangered (C).	Aguiguan, Guam (H), Rota (H), Tinian (H), Saipan (H), Anatahan (H*), Maug (H*).
Emoia slevini	Slevin's skink, Marianas Emoia, guali'ek halom tano[Ch].	Proposed–Endangered.	Guam (Cocos Island), Alamagan, Asuncion, Guguan, Pagan, Sarigan.
Hypolimnas octocula mariannensis	Mariana eight-spot butterfly.	Proposed–Endangered (C).	Guam, Saipan (H).
Vagrans egistina	Mariana wandering butterfly.	Proposed–Endangered (C).	Rota, Guam (H).
Ischnura luta	Rota blue damselfly	Proposed–Endangered.	Rota.
Partula gibba	humped tree snail, akaleha'[Ch].	Proposed–Endangered (C).	Guam, Rota, Aguiguan, Alamagan, Pagan, Sarigan, Saipan, Tinian (H), Anatahan (H).
Partula langfordi	Langford's tree snail, akaleha'[Ch].	Proposed–Endangered (C).	Aguiguan.

TABLE 1—THE 23 SPECIES ADDRESSED IN THIS PROPOSED RULE—Continued

Scientific name	Common name(s)	Listing status	Range
Partula radiolata	Guam tree snail, akaleha'Ch	Proposed–Endangered (C).	Guam.
Samoana fragilis	fragile tree snail, akaleha'Ch.	Proposed–Endangered (C).	Guam, Rota.

NCN = no common name.
(C) = Candidate Species.
H) = historical occurrence.
(H*) = possible historical occurrence.
Ch = Chamorro name.
Ca = Carolinian name.
* = range outside of the Mariana Islands.

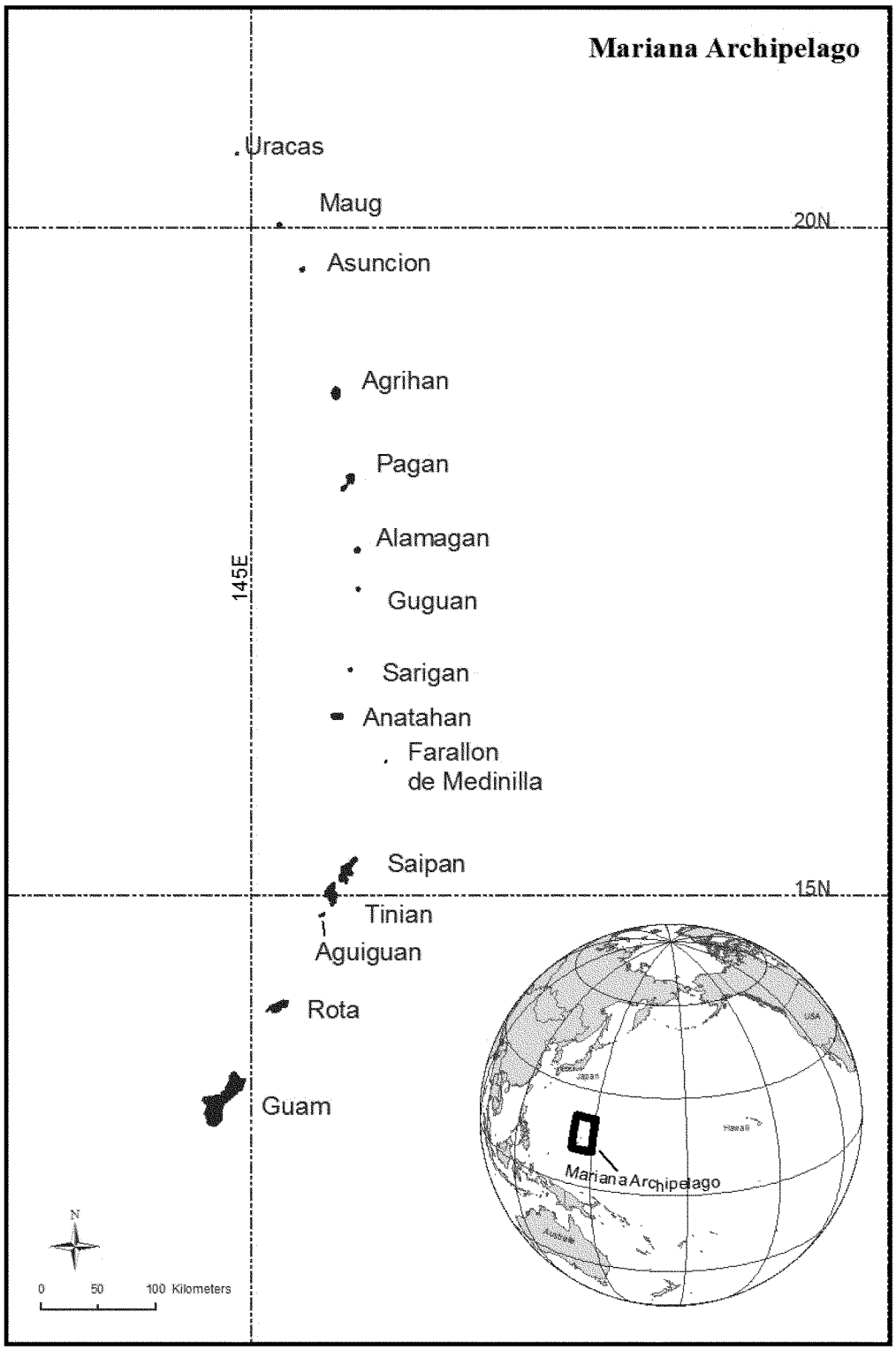
The Mariana Islands

Geography

The Mariana Islands is a longitudinallyarranged archipelago consisting of 15 main islands and various smaller islets located in western Micronesia between latitudes 21° and 13° N and longitudes 144° and 146° E. The Mariana Islands vary in age, between 5 million years old in the north and 50 million years old in the south. The archipelago was formed by the collision of the Pacific and Philippine tectonic plates at the Mariana Trench, which resulted in volcanic activity that built up a chain of mountains protruding from the sea floor (see Figure 1) (Raulerson and Rinehart 1992, p. 3; Scripps Institution of Oceanography (SIO) 2014, in litt.). Scientists biogeographically separate the Mariana Islands into the ''northern'' and ''southern'' islands based on geological time of formation and associated substratum (Fosberg et al. 1975, pp. 1 – 5; Mueller-Dombois and Fosberg 1998, p. 241). The primarily volcanic northern islands include Farallon de Medinilla, Anatahan, Sarigan, Guguan, Alamagan, Pagan, Agrihan, Asuncion, Maug, and Uracas, while the limestone and volcanic southern islands include Guam, Rota, Aguiguan, Tinian, and Saipan. The northern islands of Anatahan, Guguan, Alamagan, Asuncion, Pagan, and Uracas are still volcanically active. Only the southern islands of Guam, Cocos Island, Rota, Tinian, and Saipan are regularly inhabited by humans; all of the other Mariana Islands are considered uninhabited, although some (e.g., Aguiguan, Pagan) may be visited on occasion.

BILLING CODE 4310–55–P

Figure 1. Map of the Mariana Archipelago.



BILLING CODE 4310–55–C

Geology

The substratum of the younger northern islands is of volcanic origin, while the substratum of the older southern islands is coral limestone (Mueller-Dombois and Fosberg 1998, p. 241). The limestone substratum of the southern islands is composed of ancient coral reef limestone that developed as the islands rose from the ocean floor and eventually above sea level (Berger et al. 2005, p. 9). The northern islands contain very little limestone substratum

due to their young age and because many of them (Uracas, Pagan, Asuncion, Guguan and Anatahan) remain volcanically active (Ohba 1994, p. 14; U.S. Geological Survey (USGS) 2006, in litt.). The northern islands are composed of black basalts and are typically cone-shaped volcanoes with steep slopes, many of which have eroded into steep ravines often widened by erosion (Ohba 1994, p. 14). Areas of exposed weathered volcanic substratum can be found on the southern islands, particularly on the southern half of Guam, in strong contrast to the predominant karst limestone composition of the northern half of the island (Mueller-Dombois and Fosberg 1998, p. 241).

Vegetation

Both the intentional and inadvertent introduction of alien plant and animal species has contributed to the reduction in range of native vegetation throughout the Mariana Islands (throughout this rule, the terms ''alien,'' ''feral,'' ''nonnative,'' and ''introduced'' all refer to species that are not naturally native to the Mariana Islands). Currently, most of the extant native vegetation on the islands persists on rugged karst or steep limestone slopes and precipitous cliffs, ridgelines, valleys, and other regions where unsuitable topography prevents urbanization and agricultural development, or where inaccessibility limits encroachment by nonnative plants and grazing by feral ungulates (Amidon 2000, p. 5; Berger et al. 2005, pp. 37, 44–45).

Hydrology

There are no year-round surface water sources in the northern islands, with the exception of two small lakes on the island of Pagan. The southern islands, in contrast, exhibit multiple year-round surface water sources including wetlands and streams on Saipan, two perennial streams and two springs on Rota, a small wetland on Tinian, and several wetlands, rivers, and streams on the volcanic portions of southern Guam, particularly in the Tolofofo River region (CNMI Statewide Assessment and Resource Strategy Council (CNMI–SWARS) 2010, pp. 9–10, 30, 32; Mueller-Dombois and Fosberg 1998, pp. 248, 254, 260, 266, 269; SIO 2014, in litt.).

Climate

Their relatively low elevation above sea level (the highest point in the chain is Mt. Agrihan on Agrihan at 3,166 ft (965 m)), juxtaposed with their close proximity to the equator, insulate the Mariana Islands from seasonal variation in weather and climate. The entire archipelago is defined as the ''tropical rainforest climate'' according to the Koeppen climate classification (Ohba 1994, p. 16); however, there are very few year-round meteorological weather stations in the Mariana Islands, resulting in limited available meteorological data. Additional data has been collected from Iwo-Jima from which patterns are collectively extrapolated across the Mariana archipelago (Ohba 1994, pp. 15–16).

The Mariana archipelago exhibits two distinct seasons, a notably wetter season from July through October, and a drier season from November through June, with April characteristically being the driest month out of the year (Ohba 1994, p. 16; Mueller-Dombois and Fosberg 1998, p. 241). Precipitation averages 96 in (218 cm) per year, dependent in part upon elevation. Some of the tallest peaks across the islands experience frequent cloud cover, particularly the northern island summits of Anatahan, Alamagan, Pagan, and Sarigan (Dahl 1980, pp. 22, 64; Ohba 1994, pp. 18, 41, 48). Stone (1970, p. 12) observed the southern Mariana Islands (from Anatahan southward) to be warmer than the northern islands.

The Mariana Islands receive relatively constant trade winds with a weak westerly monsoon influence in summer months (Mueller-Dombois and Fosberg 1998, p. 241). Storms and typhoons originating from the southeast and east occur frequently with an average of one typhoon per year affecting the Mariana Islands (Mueller-Dombois and Fosberg 1998, p. 241).

Biogeography

In general, the younger, northern islands, particularly the five active volcanic islands (Uracas, Pagan, Asuncion, Guguan, and Anatahan), support fewer species and ecosystem types than the southern islands, due primarily to factors including age, time since last eruption, island size, and highest point of elevation (Ohba 1994, pp. 15–18; Mueller-Dombois and Fosberg 1998, p. 241). Historically, volcanic eruptions have proved very disruptive to the ecology of the more northern Mariana Islands when they occur (USGS 2006, in litt.; Zoology Unlimited, LLC (Limited Liability Company) 2013, pp. 9–11). For example, in May 2003, the island of Anatahan experienced a powerful and explosive eruption that destroyed 80 to 90 percent of the island's forest cover and was believed to have caused the extirpation of the Mariana fruit bat (*Pteropus mariannus mariannus*) and Micronesian megapode (*Megapodius laperouse laperouse*) (Zoology Unlimited, LLC. 2013, pp. 10–11). Fortunately, these two species have been observed on Anatahan in recent years, albeit in low numbers (Zoology Unlimited, LLC. 2013, pp. 10–11).

The cumulative literature portrays Guam and Rota, in the southern part of the archipelago, as the most species-rich of the Mariana Islands. Mueller-Dombois and Fosberg (1998, p. 243) conducted one of the most comprehensive vegetation analyses of the Mariana Islands (building upon their previous works and those of Stone (1970, 659 pp.), Ohba (1994, p. 18), and many others) and observed that, although the primary substratum differs between the northern and southern islands (*e.g.,* volcanic versus limestone, respectively), the physical nature of the substratum may be of equal or more importance than the chemical nature in determining vegetation patterns. For example, some areas covered by rough lava flows found on the northern islands exhibit convergent forest type compared to forests found on the karst limestone in the southern islands (Mueller-Dombois and Fosberg 1998, pp. 243–245). Additionally, grassland (*i.e.,* savanna) species in the northern islands overlap with species found in the southern islands grasslands, although species richness is greater on the southern islands (Mueller-Dombois and Fosberg 1998, p. 241). The northern islands are predominantly primary grasslands (colonized relatively recently after volcanic activity) with areas of secondary forest. Conversely, the southern islands are predominantly primary and secondary forests with secondary grasslands, a situation that likely arose from grassland expansion through agricultural burning and clearing (Mueller-Dombois and Fosberg 1998, p. 241).

Micronesia, together with Polynesia, is described as the Polynesia-Micronesia Hotspot, meaning that these island groups contain an exceptional concentration of endemic (found nowhere else in the world) species, and are currently experiencing exceptional habitat loss (Myers et al. 2000, pp. 853–855).

Pre-Historical Human Impact

Archaeological evidence indicates that the Mariana Islands had been settled approximately 2,000 B.C. by the pre-contact Chamorro people, who migrated from Southeast Asia (SIO 2014, in litt.). The Chamorro people introduced to the islands a variety of food plants including rice, breadfruit, sugar cane, bananas, coconuts, and taro (Stone 1970, pp. 182, 200). The exact

extent to which these early settlers modified the landscape is unknown; however, it is believed to be not insignificant (Fosberg 1960, pp. 36, 42–43). These environmental impacts may parallel those documented in the Hawaiian Islands by early Hawaiian settlers; however, early Chamorro impacts in the Mariana Islands are not as well documented.

The Chamorro established their largest settlements in the southern islands including Guam, Rota, and Saipan (Russell 1998, p. 87). However, multiple smaller settlements existed in the northern islands and these were likely dependent in part on the larger communities in the relatively resource-rich southern islands (Russell 1998, p. 84). Researchers estimate that 100,000 to 150,000 Chamorro may have inhabited these islands, a number that declined to below 5,000 individuals just a few hundred years after European contact due to introduced diseases and other factors (SIO 2014, in litt.).

Historical and Ongoing Human Impacts

After the initial Chamorro modifications for agriculture and villages, the flora and fauna on the Mariana Islands continued to undergo alterations due not only to ongoing volcanic activity in the northern islands, but also to land use activities and nonnative species introduced by European colonialists. The arrival of the Spanish in 1591 further imposed degradation of the ecosystems of the Mariana Islands with the introduction of numerous nonnative animals and plants. The Spanish occupied the Mariana Islands for nearly 300 years (SIO 2014, in litt.). In 1899, Spain sold the Mariana Islands to Germany, with the exception of Guam, which was ceded to the United States as a result of the Spanish-American war (SIO 2012, in litt.; Encyclopedia Britannica 2014, in litt.).

The German administration altered the forest ecosystem on Rota, Saipan, and Tinian, and on some of the northern islands, by means of *Cocos nucifera* (coconut) farming, which was encouraged for the production of copra (the dried fleshy part of a coconut used to make coconut oil) (Russell 1998, pp. 94–95). Upon the start of World War I, the Japanese quickly took over German occupied islands and accelerated the alteration of the landscape by clearing large areas of native forest on Rota, Saipan, and Tinian for growing *Saccharum officinarum* (sugarcane) and building associated refineries and for planting *Acacia confusa* (sosugi) to provide fuel wood (CNMI–SWARS 2010, pp. 6–7). The Japanese drastically altered the islands of Rota, Saipan, and Tinian, leaving little native forest. Military activities during World War II further altered the landscape on Saipan and Tinian. Rota was a notable exception, left relatively untouched (CNMI–SWARS 2010, p. 7). Japan also occupied Guam at the onset of World War II; however, by 1944 the U.S. neutralized the Mariana Islands with the recapture of Saipan, Tinian and Guam (Encyclopedia Britannica 2014, in litt.). Since World War II, the U.S. military has developed a strong presence in the Mariana Islands, particularly on the island of Guam, where both the U.S. Navy and U.S. Air Force operate large military installations. The island of Farallon de Medinilla is used for military ordnance training (Berger et al. 2005, p. 130).

Currently, the U.S. Department of Defense is implementing a project referred to as the ''Guam and Commonwealth of the Northern Mariana Islands Military Relocation'' (Joint Guam Program Office (JGPO)–Naval Facilities Engineering Command, Pacific (JGPO–NavFac, Pacific) 2010a, p. ES–1; JGPO–NavFac, Pacific 2013, pp. 1–1—1–3). This military relocation proposes: (1) the relocation of a portion of the U.S. Marine Corps (Marine Corps) currently in Okinawa, Japan, which consists of up to 5,000 Marines and their 1,300 dependents, as revised in the Draft Supplemental Environmental Impact Statement (SEIS) (NavFac Engineering Command Pacific 2014, p. ES–3), in addition to the development and construction of facilities and infrastructure to support training and operations on Guam and Tinian for the relocated Marines; (2) the construction of a deep-draft wharf with shoreside infrastructure at Apra Harbor, Guam, to support the U.S. Navy (Navy) transiting nuclear-powered aircraft carrier; and (3) the development of facilities and infrastructure on Guam to support the relocation of military personnel and their dependents to establish and operate a U.S. Army (Army) and Missiles Defense Task Force (JGPO–NavFac, Pacific 2010a, p. ES–7).

Both Guam and Tinian are located within the Mariana Islands Range Complex, an area used by the Department of Defense (DOD) for readiness training (JGPO–NavFac, Pacific 2010a, pp. ES–2—ES–3). The northern two-thirds of Tinian are leased to the DOD, and the development of these lands will negatively impact the habitat of 1 of the 23 species in the forest ecosystem (*Heritiera longipetiolata*). The draft 2014 SEIS focuses on the change to the preferred alternatives identified in the 2010 Final EIS (NavFac Engineering Command Pacific 2014, p. ES–1). The preferred alternative sites on Guam for the implementation of the Marine relocation efforts and development of a live-fire training range complex now include Alternative A Finegayan and Alternative 5 Northwest Field on Andersen Air Force Base (AFB), where, in total, 18 of the 23 species or their habitat are known to occur (13 of the 14 plants: *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Eugenia bryanii, Hedyotis megalantha, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Psychotria malaspinae, Solanum guamense, Tabernaemontana rotensis,* and *Tuberolabium guamense;* and 5 of the 9 animals: the Mariana eight-spot butterfly, the Mariana wandering butterfly, the Guam tree snail, the humped tree snail, and the fragile tree snail) (NavFac Engineering Command Pacific 2014, pp. ES–18—ES–22). The draft SEIS describes: (1) a more moderate construction activity over 13 years instead of a 7-year intense construction boom; (2) a significant reduction in peak and steady state population increases, from more than 79,000 new Guam residents down to 7,400 new residents; (3) a reduction in the project area at Finegayan from 2,580 ac (1,044 ha) to 1,452 ac (588 ha); (4) no new land acquisition; (5) a reduction in project area at Northwest Field (instead of Route 15); and (6) an overall decrease in power and water demands (NavFac Engineering Command Pacific 2014, p. ES–3).

In conjunction with the relocation efforts discussed above, the U.S. military is planning to improve existing and develop new live-fire military training areas on the islands of Tinian and Pagan (JPGO–NavFac, Pacific 2010a, pp. ES–5, ES–16–17, ES 19–20, ES–40; CJMT EIS–OEIS (see below)). The Marine Corps (the Executive Agent designated by the U.S. Pacific Command) recently published their ''Commonwealth of the Northern Mariana Islands Joint Military Training Environmental Impact Statement—Overseas Environmental Impact Statement (CJMT EIS–OEIS at *http://www.cnmijointmilitarytrainingeis.com/about*). The CJMT EIS–OEIS Final Scoping Summary Report informs the public that the military plans to maximize use of DOD-leased lands within CNMI, specifically Tinian and Pagan. The live-fire training range project area on Tinian overlaps with the relocation effort areas discussed above (the northern two-thirds of the island). Likewise, the live-fire training range

project will negatively impact the plant species *Heritiera longipetiolata,* as discussed above. On Pagan, both Alternative 1 and Alternative 2 claim the entire island as a live-fire training area (NavFac Engineering Command Pacific 2014, p. 13). In addition, the live-fire training range project proposes the designation of special use air and sea spaces around the entire islands of Pagan, Tinian, and Aguiguan (just south of Tinian), and most of Saipan (north of Tinian). If the entire island of Pagan is used as a live-fire training range area, it would negatively impact 4 of the 23 species (*Cycas micronesica,* Slevin's skink, humped tree snail, and habitat for *Bulbophyllum guamense*) and their habitat in the forest ecosystem.

In addition to military spending, Guam's economy depends on tourism. More than 1 million tourists visit Guam annually, mostly arriving from Japan, Korea, and other Asian countries. In the early 1960s, military contributions to Guam's economy approached 60 percent, with tourism adding almost another 30 percent. There was a downturn in military presence and tourism in the 70s and 80s; however, recently, with the projected increase in military employees and their dependents, and with Guam seeking a ''no visa required'' status for visitors from Russia and China, monitoring of sea ports and airports against inadvertent introduction of harmful and invasive species is especially important (*http://www.guamvisitorsbureau.com/,* accessed April 25, 2014; *http://guampedia.com/evolution-of-the-tourism-industry-on-guam-2/#toc-consequences-and-conclusions,* accessed April 25, 2014) (see *Factor D. The Inadequacy of Existing Regulatory Mechanisms*).

Political Division

Micronesia consists of several island groups: (1) Mariana Islands (collectively the U.S. Commonwealth of the Northern Mariana Islands (CNMI) and the U.S. Territory of Guam); (2) the Federated States of Micronesia, including the Caroline Islands, Yap, Chuuk, Pohnpei, and Kosrae and the Republic of Palau, the Republic of Kiribati, the Republic of the Marshall Islands, Nauru, and Wake Island.

Islands in the Mariana Archipelago

A brief summary of each island in the Mariana archipelago, from south to north, follows below (for detailed information see Stone 1970, 75 pp.; Falanruw et al. 1989, 11 pp.; Ohba 1994, 56 pp.; Mueller-Dombois and Fosberg 1998, 32 pp.). Here we describe each of the islands in the Mariana archipelago, even if the species addressed in this proposed rule do not currently occur there, or were not found there historically, to provide the reader context for understanding various issues discussed in this document or in subsequent rulemakings that may make reference to the various islands.

Guam

Guam is the largest and southernmost island of the Mariana Islands. It is nearly 31 miles (mi) (50 kilometers (km)) long and from 4 to 9 mi (7 to 15 km) wide, with a peak elevation of 1,332 feet (ft) (406 meters (m)) at Mt. Lamlam (Muller-Dombois and Fosberg 1998, p. 269). Guam is located in the northwestern Pacific Ocean, 1,200 mi (1,930 km) east of the Philippines, 3,500 mi (5,632 km) west of the Hawaiian Islands, and 54 mi (87 km) south of Rota. The northern and southern regions of the island show marked contrast due to their geologic history. The northern region is an extensive, upraised, terraced, limestone plateau or ''mesa'' between 300 and 600 ft (90 and 183 m) above sea level interrupted by a few low hills, of which two (Mataguac and Mt. Santa Rosa) are volcanic in nature; others are exclusively coralline limestone (e.g., Barrigada Hill and Ritidian Point (Stone 1970, p. 12)). The southern region is primarily volcanic material (e.g., basalts) with several areas capped by a layer of limestone (Stone 1970, p. 12).

Of all the Mariana Islands, Guam contains the most extensive stream and drainage systems, particularly in the Talofofo Region (Stone 1970, p. 13; Muller-Dombois and Fosberg 1998, p. 269). Fairly extensive wetland areas are located on both coasts of the southern region as well as the higher elevation Agana Swamp located in the middle of the island. Guam is also the most populated of all the Mariana Islands, with more than 180,000 residents. Guam has experienced impacts from at least 4,000 years of human contact, starting with the Chamorro, followed by the Spanish, Germans, Japanese, and Americans (see ''Pre-Historical Human Impact'' and ''Historical and Ongoing Human Impacts,'' above). World War II and subsequent U.S. military activity have also negatively impacted natural habitats on Guam; however, the buffer zones around the U.S. Navy and Air Force bases on Guam and conservation areas designated on these bases support some of the rarest species. There are three conservation areas designated by the Guam Department of Aquatic and Wildlife Resources (GDAWR): (1) Anao Conservation Area; (2) Bolanos Conservation Area; and, (3) Cotal Conservation Area (GDAWR 2006, p. 39; Sablan Environmental, Inc. 2008, p. 3). Guam supports the forest, savanna, stream, and cave ecosystems (see ''Mariana Islands Ecosystems,'' below). Twenty of the 23 species addressed in this proposed rule occur on Guam (all 14 plants: *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Eugenia bryanii, Hedyotis megalantha, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Psychotria malaspinae, Solanum guamense, Tabernaemontana rotensis, Tinospora homosepala,* and *Tuberolabium guamense;* and 6 of the 9 animals: Slevin's skink (Cocos Island, off Guam), the Mariana eight-spot butterfly, the Mariana wandering butterfly, the Guam tree snail, the humped tree snail, and the fragile tree snail. The Pacific sheath-tailed bat occurred on Guam historically.

Rota

Just northeast of Guam (36 mi; 58 km) and southwest of Aguiguan (47 mi; 76 km), Rota is the fourth largest island in the Mariana Islands, measuring 33 square miles (mi^2) (96 square kilometers (km^2)) in land area (Mueller-Dombois and Fosberg 1998, p. 265; CNMI–SWARS 2010, p. 6). The highest point on the island is Mount Sabana or the ''Sabana plateau,'' at just over 1,600 ft (488 m) (Mueller-Dombois and Fosberg 1998, p. 265). The Sabana plateau is characterized by a savanna ringed by forest that extends onto the surrounding karst limestone cliffs and down the rugged slopes that encircle all sides of the Sabana (Mueller-Dombois and Fosberg 1998, pp. 265–266). Rota consists primarily of terraced limestone surrounding a volcanic core that protrudes from the topmost plateau, or Sabana. The Sabana is noticeably wetter than the rest of the island and is the only location known to support all four orchids proposed for listing as endangered or threatened species in this rule (*Bulbophyllum guamense, Dendrobium guamense, Nervilia jacksoniae,* and *Tuberolabium guamense*) (Harrington et al. 2012, in litt.).

Rota has experienced land alterations since the arrival of the first Chamorro more than 4,000 years ago. When the Mariana Islands were occupied by the Japanese (1914–1944) they cleared forest areas to plant large sugarcane plantations and conducted phosphate mining on the Sabana plateau (Amidon 2000, pp. 4–5; Engbring 1986, pp. 10, 27). Although Rota was never invaded during World War II, it was heavily bombed by U.S. military forces

(Engbring et al. 1986, pp. 8, 11). Rota has a population of approximately 3,000 people. In recent years, three terrestrial conservation areas have been designated on Rota by the CNMI Department of Land and Natural Resources: (1) The Sabana Heights Wildlife Conservation Area; (2) I-Chenchon Park Wildlife Conservation Area and Bird Sanctuary; and, (3) Wedding Cake Mountain Wildlife Conservation Area (Berger et al. 2005, p. 14).

Rota supports the forest, savanna, stream, and cave ecosystems. Eleven of the 23 species addressed in this proposed rule currently occur on Rota (7 of the 14 plants: *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Maesa walkeri, Nervilia jacksoniae, Tabernaemontana rotensis,* and *Tuberolabium guamense;* and 4 of the 9 animals: the Mariana wandering butterfly, the Rota blue damselfly, the fragile tree snail, and the humped tree snail). The plants *Heritiera longipetiolata* and *Solanum guamense* and the Pacific sheath-tailed bat were known from Rota historically.

Aguiguan

Aguiguan is known as ''Goat Island'' due to the presence of a large feral goat population (Engbring et al. 1986, p. 8). Located approximately 8 km (5 mi) southwest of Tinian, Aguiguan is a small uninhabited island measuring 7 mi^2 (18 km^2) in land area with a peak elevation of 515 ft (157 m) at Mt. Alutom (CNMI–SWARS 2010, p. 6). This island was historically inhabited by the Chamorro people (Russell 1998, pp. 90–91). Aguiguan is entirely limestone, with very steep cliffs fringing nearly the entire island, making access difficult (Berger et al. 2005, p. 36). There are no streams on the island (Engbring et al. 1986, p. 8). During the Japanese occupation, large areas of native forest were cleared for sugarcane plantations, a large runway and other war-related structures (Engbring et al. 1986, p. 8; Mueller-Dombois and Fosberg 1998, p. 264). Ecosystem types on Aguiguan include forest and cave. Three of the 23 species addressed in this proposed rule occur on Aguiguan: the Pacific sheath-tailed bat, the humped tree snail, and Langford's tree snail. The plant *Tuberolabium guamense* was known from Aguiguan historically.

Tinian

Located approximately 3 mi (5 km) southeast of Saipan and 7 mi (9 km) north of Aguiguan, Tinian is the third largest island in the Mariana Islands, measuring 40 mi^2 (101 km^2) in area, with a peak elevation of 584 ft (178 m) at Lasso Hill (Engbring et al. 1986, p. 5). The island of Tinian has a population of more than 3,000 residents. Tinian's climate is the same as that of Guam (see *''The Mariana Islands,''* above). The island is predominantly limestone with low-lying plateaus and ridges, and lacks surface streams (Stafford et al. 2005, p. 15; Engbring et al. 1986, p. 5). Two small wetland areas, heavily overgrown with no open water, Hagoi Marsh and Marpo Swamp, serve as a domestic water source (Engbring et al. 1986, p. 5). Tinian has lost most of its primary (native) forest, due initially to clearing for agriculture by the Chamorro, followed by agricultural endeavors of German colonialists in the early 1900s (*e.g.,* coconut plantations) and then by Japanese settlers after 1914 (e.g., sugarcane plantations) (Berger et al. 2005, pp. 36–37). Impacts to Tinian's native vegetation were then compounded by impacts from military activities during World War II (Mueller-Dombois and Fosberg 1998, p. 262; Russell 1998, p. 98; CNMI–SWARS 2010, pp. 6–7, 28–29). Currently, approximately 5 percent of primary (native) forest remains on Tinian (Engbring et al. 1986, p. 25). Tinian supports the forest and cave ecosystems. Tinian currently has no designated conservation areas. One of the 23 species addressed in this proposed rule occurs on Tinian, *Heritiera longipetiolata.* The plants *Dendrobium guamense, Solanum guamense,* and *Tuberolabium guamense,* the Pacific sheath-tailed bat, and the humped tree snail were known from Tinian historically.

Saipan

Located approximately 3 mi (4.5 km) northeast of Tinian, Saipan is the second largest and second most populous of the Mariana Islands, measuring 44 mi^2 (115 km^2) with a peak elevation of 1,555 ft (474 m) at Mt. Tapochau (Mueller-Dombois and Fosberg 1998, p. 256). The island is composed primarily of terraced limestone peaks, with exposed volcanic ridges and slopes (Mueller-Dombois and Fosberg 1998, p. 256). Saipan supported a large population of Chamorro people for thousands of years, followed by the Spanish, Germans, Japanese, and the U.S. military forces, and was also heavily impacted by World War II. Saipan is the site of one of the largest battles in the Pacific between U.S. and Japanese forces. Much of Saipan's forests were destroyed during World War II, with only pockets of native forest surviving (Engbring et al. 1986, pp. 3–5, 10–12; Berger et al. 2005, pp. 38–39). Due to this widespread destruction of native forests and subsequent erosion, the nonnative tree *Leucaena leucocephala* (tangantangan) was seeded for erosion control (Berger et al. 2005, p. 32). Tangantangan is now a dominant tree species on the island, and forms a unique mixed-forest habitat not reported from the other islands (CNMI–SWARS 2010, p. 7). There are four conservation areas on Saipan: (1) Bird Island Wildlife Preserve; (2) Kagman Wildlife Conservation Area and Forbidden Island Sanctuary; (3) Marpi Forest; and (4) the Saipan Upland Mitigation Bank (Berger et al. 2005, p. 14). Ecosystem types on Saipan include forest, savanna, and cave. One of the 23 species addressed in this proposed rule occurs on Saipan, the humped tree snail. The plants *Bulbophyllum guamense, Dendrobium guamense,* and *Solanum guamense,* the Pacific sheath-tailed bat, and the Mariana eight-spot butterfly were known from Saipan historically.

Farallon de Medinilla

Located approximately 52 mi (83 km) northeast of Saipan, and 33 mi (53 km) south of Anatahan, Farallon de Medinilla (FDM) is a small, uninhabited island measuring less than 1 mi^2 (3 km^2) in area with a peak elevation of 1,047 ft (319 m) (CNMI–SWARS 2010, p. 6). None of the 23 species are currently or historically documented from this island.

Anatahan

Located approximately 23 mi (37 km) south of Sarigan, and 33 mi (53 km) northwest of FDM, Anatahan is an uninhabited volcanic island with recent activity, measuring 12 mi^2 (31 km^2) in land area, and a peak elevation of 2,582 ft (788 m) (Mueller-Dombois and Fosberg 1998, p. 252; CNMI–SWARS 2010, p. 6). This island is believed to have been inhabited by the Chamorro people, if not as a permanent residence, then as a collection site for natural resources (Russell 1998, p. 87). Climate on Anatahan is similar to Guam and the other southern Mariana Islands (see ''*The Mariana Islands,*'' above); however, being at a more northerly latitude, can be slightly cooler than the islands to the south (Ohba 1994, p. 14). Notable physical features of Anatahan include two volcanoes with an east to west trending summit depression formed by overlapping summit craters (Berger et al. 2005, p. 11). The largest caldera measures 1.5 by 2 mi (2 by 3 km) wide. Between 2003 and 2005, Anatahan erupted several times, with the largest eruption occurring in 2005, covering the island with at least 6 ft (2 m) of volcanic ash and destroying an estimated 98 percent of the forest and

savanna habitat (Berger et al. 2005, p. 11; Kessler 2011, pp. 321, 323). Coconut crabs (*Birgus latro*) and five species of resident land birds were eliminated along with most plants and other animals; however, cats (*Felis catus*), rats (*Rattus* spp.), and monitor lizards (*Varanus indicus*) survived (Kessler 2011, p. 323). Vegetation is slowly recovering, and if cats and rats were eliminated, Anatahan could be a good site for the reintroduction of native species—a ''clean slate'' (Kessler 2011, pp. 323–324). At this time, none of the 23 species are known to occur on Anatahan; however, the humped tree snail occurred there historically.

Sarigan

Located approximately 40 mi (64 km) south of Guguan and 23 mi (37 km) northeast of Anatahan, Sarigan is an uninhabited, roughly triangular, island measuring 2 mi^2 (5 km^2) in width with a peak elevation of 1,801 ft (549 m) (CNMI–SWARS 2010, p. 6). The island is believed to have been inhabited by the Chamorro people (Russell 1998, p. 86). Sarigan consists of a low truncated volcanic cone with a 2,460-ft (750-m)-wide summit crater containing a small ash cone. Other notable physical features of Sarigan include irregular shorelines with steep cliffs created by old lava flows (Berger et al. 2005, p. 12). Sarigan has undergone complete eradication of feral ungulates, following the recommendation of the 1998 Fish and Wildlife Biological Opinion for U.S. Navy mitigation for their bombing activities on FDM. The ungulate removal project was a cooperative effort by FWS, U.S. Navy, CNMI Division of Fish and Wildlife (DFW), and the Northern Islands Mayor's Office. The islands' native vegetation and fauna is now increasing in species richness and population numbers (Kessler 2011, pp. 320–322). Ecosystem types on Sarigan include forest and savanna. Two of the 23 species are known to occur on Sarigan (Slevin's skink and the humped tree snail). We are unaware of historical occurrences of the other 21 species on Sarigan.

Guguan

Located approximately 19 mi (30 km) south of Alamagan and 40 mi (64 km) northeast of Sarigan, Guguan is an uninhabited island with volcanic activity, measuring 2 mi^2 (4 km^2) and a peak elevation of 988 ft (301 m) (Ohba 1994, p. 16). The island is not believed to have been inhabited by the Chamorro people (Russell 1998, pp. 83–89). Its north side is devoid of vegetation resulting from volcanic activity, and its south side is a vegetated, eroded, volcanic cone. Other notable physical features of Guguan include steep cliffs along the shoreline and moist to wet ravines (SIO 2014, in litt.). Also notable is the presence of dense seabird colonies (Ohba 1994, p. 16; Berger et al. 2005, p. 12). Guguan supports the forest ecosystem. The entire island of Guguan is a designated conservation area (Berger et al. 2005, p. 15). One of the 23 species occurs on Guguan (Slevin's skink). The plant *Solanum guamense* occurred on Guguan historically.

Alamagan

Located approximately 18 mi (29 km) north of Guguan and 30 mi (48 km) south of Pagan, Alamagan is an uninhabited island with volcanic activity, measuring 4 mi^2 (11 km^2), and a peak elevation of 2,441 ft (744 m) at Mt. Alamagan (Ohba 1994, p. 16). Alamagan is an emergent summit of a large stratovolcano (steep, many-layered volcano characterized by periodic explosive eruptions) with a 1,148-ft (350-m) deep summit crater at the center of the island (Berger et al. 2005, p. 12). Most of the historically recent eruptions have been violently explosive (Berger et al. 2005, p. 12). The island was inhabited by the Chamorro people (Russell 1998, p. 86). Alamagan supports the forest and savanna ecosystems. Two of the 23 species are known to occur on Alamagan (Slevin's skink and the humped tree snail). We are unaware of historical occurrences of the other 21 species on Alamagan.

Pagan

Located 42 mi (68 km) from Agrihan and 30 mi (48 km) from Alamagan, Pagan is the fifth largest island in the Marianas archipelago, and the largest of the northern Mariana Islands, with an area of 19 mi^2 (48 km^2) (Ohba 1994, p. 17). Four volcanoes comprise Pagan: Mt. Pagan in the north, and an unnamed complex of three older volcanoes to the south (Ohba 1994, p. 17; Smithsonian Institution 2014a, in litt.). These volcanoes are connected by a narrow isthmus. The highest point on this island is Mt. Pagan, which rises 1,870 ft (570 m) above sea level. Mt. Pagan is one of the most active volcanoes in the Mariana Islands, with its most recent eruption in 2012 (Smithsonian Institution 2014b, in litt.). The largest eruption during historical times took place in 1981, when lava buried 10 percent of the island, and ash covered the entire island, forcing the 53 residents to flee to Saipan (Smithsonian Institution 2014b, in litt.). The island of Pagan supports the forest and savanna ecosystems. Three of the 23 species are known to occur on Pagan, the tree *Cycas micronesica* and the animals Slevin's skink and the humped tree snail. The plant *Bulbophyllum guamense* occurred historically on Pagan.

Agrihan

Located approximately 64 mi (102 km) south of Asuncion, and 39 mi (63 km) north of Pagan, Agrihan is an almost perfectly round, active volcanic cone (Ohba 1994, p. 17). None of the 23 species addressed in this proposed rule are known to have historically occurred, or to currently occur, on Agrihan, but other listed species, the Mariana fruit bat and the Micronesian megapode, occur there.

Asuncion

Asuncion is located approximately 23 mi (37 km) southeast of Maug and 62 mi (100 km) north of Agrihan. This island is an active, uninhabited volcano measuring 3 mi^2 (7 km^2), with a peak elevation of 2,923 ft (891 m) (Ohba 1994, p. 18; Mueller-Dombois and Fosberg 1998, p. 245). Historically, Asuncion was inhabited by Chamorro peoples when Sanvitores arrived in the mid 1600s, and as evidenced by coconut groves (Mueller-Dombois and Fosberg 1998, p. 235). The long interval since Asuncion's last confirmed eruption in 1906 (Smithsonian Institution 2014c, in litt.), in conjunction with its high summit often enclosed by clouds (Ohba 1994, p. 18), affords this cone-shaped volcanic island densely forested slopes with diverse vegetation. Asuncion supports the forest and savanna ecosystems (Ohba 1994, p. 18). The entire island of Asuncion is a designated conservation area (Berger et al. 2005, p. 15). One of the 23 species addressed in this proposed rule is known to occur on Asuncion (Slevin's skink). The plant *Solanum guamense* occurred historically on Asuncion.

Maug

Located approximately 43 mi (70 km) south of Uracas and 24 mi (39 km) north of Asuncion, Maug consists of three small, uninhabited islets (East Island, West Island, and North Island). The three islets are the emergent portions of a largely submerged volcano, with a central lagoon within a sunken crater (Ohba 1994, p. 18; Mueller-Dombois and Fosberg 1998, p. 244). The collective land mass of the three islets measures 0.8 mi^2 (2 km^2) with the highest elevation at 745 ft (227 m) at North Island (Ohba 1994, p. 18; Mueller-Dombois and Fosberg 1998, p. 244). Historically, Chamorro people inhabited Maug (Russell 1998, p. 88), and the islets were briefly inhabited by the Japanese during World War II (Russell

1998, pp. 96–97). Each of the three islets consists of narrow rocky ridges covered primarily by grasslands, sedges, and scrub; however, larger trees such as *Hernandia* sp., *Pisonia grandis,* and *Terminalia catappa* have been reported to occur in ravines on the leeward sides (Ohba 1994, p. 18; Mueller-Dombois and Fosberg 1998, pp. 244–245). Ecosystems on Maug include forest and savanna, which currently provide habitat for large breeding colonies of a variety of seabirds (Ohba 1994, p. 18). All three islets that comprise Maug are designated as a conservation area (Berger et al. 2005, p. 15). None of the 23 species addressed in this proposed rule are known to currently occur on the islands of Maug. The plant *Solanum guamense* occurred historically on Maug.

Uracas

Uracas (Farallon de pajaros), is the northernmost island of the Mariana archipelago, roughly 43 mi (70 km) northwest of Maug. The island is an active, uninhabited volcano measuring 0.9 mi^2 (2 km^2) and with a peak elevation of 1,180 ft (334 m) (Ohba 1994, p. 18). None of the 23 species addressed in this proposed rule, or any previously listed species, are known to have historically occurred, or to currently occur, on Uracas.

An Ecosystem-Based Approach to Assessing the Conservation Status of 23 Species in the Mariana Islands

In this document, we have analyzed the threats to each of the 23 Mariana Islands species individually to determine the appropriate status of each species on its own merits under the Act. However, because many of these species, and particularly those that share the same habitat types (henceforth referred to as ecosystems), share a very similar suite of threats, we have organized the 23 species addressed in this proposed rule by common ecosystem for efficiency, to reduce repetition for the reader, and to reduce publication costs. Therefore, we begin our analysis of the potential threats to each of the 23 species by first describing the relevant ecosystems in which these species occur, to avoid repeating the habitat characteristics associated with each individual species found in the same ecosystem. Organizing the rule in this way also allows us to describe threats that affect multiple species occurring in shared ecosystems in a more efficient manner, again reducing repetition for the reader and saving publication costs.

In addition, as an incidental benefit of assessing the threats to the 23 species using shared ecosystems as an organizational tool, we have laid the groundwork for better addressing threats to these species, should they be listed. On the Mariana Islands native species occurring in the same habitat types depend on many of the same physical and biological features and the successful functioning of their specific ecosystem to survive. Because these species that share ecosystems face a suite of shared threats, managing or eliminating these threats holistically at an ecosystem level is more cost effective and should lead to better resource protection for all native species. Cost-effective management of these threats requires implementation of conservation actions at the ecosystem level to enhance or restore critical ecological processes and provide for long-term viability of species and their habitat. Organizing the 23 Mariana Islands species by shared ecosystems sets the stage for a conservation management approach of protecting, restoring, and enhancing critical ecological processes at an ecosystem scale for the long-term viability of all associated native species in a given ecosystem type and locality, thus potentially preventing the future imperilment of any additional species that may require protection. This approach is in accord with the primary stated purpose of the Act (see section 2(b)): ''to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.''

Each of the 23 Mariana Islands species is found in one of the four ecosystem types described in this rule: forest, savanna, stream, and cave (Table 2). Of the 23 species, only the Pacific sheath-tailed bat is found in more than one ecosystem type (forest and cave).

TABLE 2—THE 23 MARIANA ISLANDS SPECIES AND THE ECOSYSTEMS UPON WHICH THEY DEPEND

Ecosystem	Species	
	Plants	Animals
Forest ...	*Bulbophyllum guamense.* *Cycas micronesica.* *Dendrobium guamense.* *Eugenia bryanii* *Heritiera longipetiolata.* *Maesa walkeri* *Nervilia jacksoniae.* *Psychotria malaspinae.* *Solanum guamense.* *Tabernaemontana rotensis.* *Tinospora homosepala.* *Tuberolabium guamense.*	Pacific sheath-tailed bat. Slevin's skink. Mariana eight-spot butterfly. Mariana wandering butterfly. Humped tree snail. Langford's tree snail. Guam tree snail. Fragile tree snail.
Savanna	*Hedyotis megalantha.* *Phyllanthus saffordii.*	
Stream	.....	Rota blue damselfly.
Cave	.....	Pacific sheath-tailed bat.

For all of the proposed species, we identified and evaluated those factors that are threats to each individual species specifically (species-specific threats), as well as those factors which are common threats to all of the species of a given ecosystem type (ecosystem-level threats). For example, the degradation of habitat by nonnative ungulates is considered a direct or indirect threat to 17 of the 23 species proposed for listing as endangered or threatened species. We have labeled such threats that are shared by all species within the same ecosystem as an ''ecosystem-level threat,'' because they impact all proposed species occurring in that ecosystem type in terms of the nature of the impact, its severity, timing, and scope. Beyond ecosystem-level threats, we further identified and evaluated species-specific threats that may be unique to certain species. For example, the threat of predation by nonnative flatworms is unique and specific to the four tree snails addressed in this rule.

Mariana Islands Ecosystems

For the purposes of organizing our threats discussion for the 23 species by shared habitats, we describe four broad Mariana Islands ecosystems: Forest,

savanna, stream, and cave, based on physical features, elevation, substratum, vegetation type, and hydrology (see *''The Mariana Islands,''* above). We acknowledge the presence of other ecosystems (e.g., coastal, wetland) in the Mariana Islands, however we limit our discussion to these four because they are the relevant ecosystems that support the 23 species proposed for listing as endangered or threatened species in this rule.

Forest Ecosystem

There are two substrate types in the forest ecosystem, limestone and volcanic (Stone 1970, pp. 9, 14, 18–24; Falanruw et al. 1989, pp. 6–9; Ohba 1994, pp. 19–29; Mueller-Dombois and Fosberg 1998, p. 243). The annual rainfall in the forest ecosystem lies within the archipelago average, ranging from 78 to 100 inches (in) (2,000 to 2,500 millimeters (mm)), with a rainy season from June or July through October or November. The temperature of the forest ecosystem mirrors the archipelago monthly averages, between 75 degrees Fahrenheit (°F) and 82 °F (24 degrees Celsius (°C) and 28 °C), with extremes of 64 °F and 95 °F (18 °C and 35 °C). Multiple plant species are present throughout the forest ecosystem, and on most of the islands; however, variations in species structure are observed (Fosberg 1960, pp. 37, 56–59, plates 1–40; Falanruw et al. 1989, pp. 6–9; Ohba 1994, pp. 19–29; Mueller-Dombois and Fosberg 1998, pp. 257, 268, 270–271).

Native canopy species in the forest ecosystem (as defined here) include but are not limited to: *Artocarpus mariannensis, Barringtonia asiatica, Claoxylon* spp., *Cordia subcordata, Cyathea* spp., *Cyanometra ramiflora, Elaeocarpus joga, Ficus prolixa, Guamia mariannensis, Hernandia labyrinthica, H. sonora, Maytenus thompsonii, Merrilliodendron megacarpum, Ochrosia mariannensis, Pandanus dubius, P. tectorius, Pisonia grandis, Pouteria obovata,* and *Premna obtusifolia* (Falanruw et al. 1989, pp. 6–9; Raulerson and Rinehart 1991, pp. 6–7, 11, 14, 20, 24, 28, 33, 50, 52–53, 62–63, 72, 91, 96, 104; Ohba 1994, pp. 19–29; Mueller-Dombois and Fosberg 1998, pp. 257, 268, 270–271; Wiewel et al. 2009, pp. 206–207). Native subcanopy species include but are not limited to: *Aglaia mariannensis, Aidia cochinchinensis, Allophyllus timoriensis, Cyathea aramaganensis, Eugenia palumbis, E. reinwardtiana, Hibiscus tiliaceus, Neisosperma oppositifolia, Psychotria mariana,* and *Xylosma nelsonii* (Stone 1970, pp. 9, 14, 18–24; Falanruw et al. 1989, pp. 6–9; Raulerson and Rinehart 1991, pp. 13, 47, 56, 59, 68–69, 77, 84, 88; Ohba 1994, pp. 19–29; Mueller-Dombois and Fosberg 1998, pp. 252–253, 257, 268, 272); and native understory species include but are not limited to: *Discocalyx megacarpa, Hedyotis* spp., *Nephrolepis bisserrata, N. hirsutula, Phyllanthus marianus,* and *Piper guamense* (Falanruw et al. 1989, pp. 6–9; Ohba 1994, pp. 19–29; Mueller-Dombois and Fosberg 1998, pp. 247, 268). Further, in select areas of the forest ecosystem, usually where the forest is situated to receive and retain more moisture, the canopy trees are covered in various mosses and epiphytic ferns and orchids (Mueller-Dombois and Fosberg 1998, p. 268).

Dominant canopy, subcanopy, and understory species can vary from one location to the next on the same island, and from island to island. These species can be endemic to one island, occur on one or more of the southern islands (e.g., the understory species *Discocalyx megacarpa*), or occur on one or more of the northern islands (e.g., *Cyathea aramaganensis*). In addition, biologists have observed overlap of forest species on limestone and volcanic substrata, suggesting that physical properties may be more important than chemical properties of these substrates in determining vegetation characteristics (Mueller-Dombois and Fosberg 1998, pp. 262–264). Elevation also contributes to variations in vegetation, as observed on Mt. Alutom, Mt. Almagosa, Mt. Lamlam, and Mt. Bolanus on Guam; the Rota Sabana; and on the slopes of the northern islands (Stone 1970, pp. 9, 14, 18–24; Falanruw 1989, pp. 4–6; Mueller-Dombois and Fosberg 1998, pp. 262–264); although in some cases there is no definite correlation with elevation (i.e., the moisture-retaining, moss-and-epiphyte-covered sections of the forest ecosystem are found near the coast in some areas and also at mid to high elevations) (Fosberg 1960, p. 30).

Additionally, biologists have observed a change in distribution of *Hernandia* species with elevation. For example, *H. sonora,* dominant on the coastal side of the forest ecosystem, changes distinctly to *H. labyrinthica* as the elevation increases (Amidon 2000, p. 49). The significance of these interpretations of forest-associated species in the Mariana archipelago to the 14 plants in this rule is not adequately definitive to subclassify a forest type for each of the species in this rule; therefore, we describe a general forest ecosystem here, with the substrate, temperatures, rainfall, and associated native canopy, subcanopy, and understory species, listed above. The forest ecosystem supports 21 of the 23 species proposed for listing as endangered or threatened species in this rule (all except the plants *Hedyotis megalantha* and *Phyllanthus saffordii,* which occur only in the savanna ecosystem).

Savanna Ecosystem

The savanna ecosystem of the Mariana Islands is characterized by volcanic substrate, primarily of basalts, with laterite soil (red clay rich in iron and aluminum) and a vegetation type in which grasses are the dominant plants. The savanna ecosystem on Guam is segmented by multiple narrow ravine forests, with some grassland (Mueller-Dombois and Fosberg 1998, pp. 241, 272). Savanna is considered a primary ecosystem type; however, human clearing and burning of forests and the presence of feral ungulates have contributed toward the expansion of secondary savanna into areas that previously supported the forest ecosystem (Mueller-Dombois and Fosberg 1998, pp. 241–243; Stone 1970, p. 31). Some authorities have suggested that savanna should not be classified as a native ecosystem in the Mariana Islands (Athens and Ward 2004, p. 27); however, we concur with Mueller-Dombois and Fosberg (1998, pp. 241–243), Stone (1970, pp. 14, 19, 21, 23, 30), and Hunter-Anderson (2009, 16 pp.), that savanna can be classified as a primary ecosystem type. Hunter-Anderson published a detailed analysis of charcoal samples, historical climate change trends, patterns of soil deposition, known agricultural techniques used by the early settlers, and Holocene-age pollen and spore studies, all indicating that the first settlers did not use fire to create or enlarge new open areas (savanna) for agriculture (Hunter-Anderson 2009, 16 pp.). These findings support the theory that the savanna ecosystem type existed prior to human presence in the Mariana Islands.

Annual rainfall in the savanna ecosystem ranges from 78 to 100 in (2,000 to 2,500 mm), with a rainy season from June or July through October or November. Likewise, the temperature of the savanna ecosystem averages between 75 °F and 82 °F (24 °C and 28 °C), with extremes of 64 °F and 95 °F (18 °C and 35 °C). Several endemic plant species are associated with the savanna ecosystem: the grass *Dimeria chloridiformis;* the small herbaceous perennial *Dianella saffordiana,* and the small tree *Phyllanthus mariannensis* (Stone 1970, pp. 19, 388, 549; Mueller-Dombois and Fosberg 1998, pp. 241–243; Hunter-Anderson 2009, 16 pp). Other native savanna species include

the shrubs *Decaspermum fruticosum, Dodonaea viscosa, Melastoma marianum, Myrtella bennigseniana,* and *Wikstroemia elliptica,* the grass *Digitaria mariannensis;* and subspecies of the fern *Dicranopteris.* Another dominant but controversial component of the savanna ecosystem is the grass *Miscanthus floridulus* (giant miscanthus). Although *M. floridulus* occurred historically on Pagan as analyzed in fossil records studied in 1958 (Fosberg and Corwin 1958, pp. 8–9), and currently occurs on almost all of the 15 Mariana Islands, this species is considered invasive by most Mariana Islands ecologists. Recent field observations revealed that *M. floridulus* often grows in widespread, monotypic stands, whereas endemic plants such as *Hedyotis megalantha* and *Phyllanthus saffordii* grow compatibly within patches of the native fern *Dicranopteris linearis* (Gawel 2012, in litt.). The savanna ecosystem supports 2 of the 14 plant species proposed for listing as endangered or threatened species in this rule (*Hedyotis megalantha* and *Phyllanthus saffordii*).

Cave Ecosystem

The cave ecosystem is largely located in limestone (karst) areas on the southern islands of Saipan, Aguiguan, Rota, and Guam (Taborosi 2004, pp. 14–15). Limited areas of cave ecosystem also occur on the volcanic northern Mariana Islands where lava tubes and other crevices occur. The cave ecosystem includes stream caves, lava tubes, sea caves, and solution caves (Taborosi 2004, pp. 2, 11; Water and Environmental Research Institute and the Western Pacific-Island Research and Education Initiative (WERI–IREI) 2014, in litt.). Solution caves are the most common, except for on Tinian, which has mostly flank margin caves (Stafford et al. 2005, p. 20; WERI–IREI 2014, in litt.). Solution caves are cavities that have developed in the limestone substrate through the action of running water, erosion, and collapse (WERI–IREI 2014, in litt). Flank margin caves form at the distal margin of the fresh water lens, where mixing of fresh and saline waters occurs (Stafford et al. 2005, p. 20).

Ambient temperatures and rainfall in the cave ecosystem are the same as for surrounding areas in the Marianna Islands (average of 75 °F to 90 °F (24 °C to 32 °C); rainfall 78 in (2,000 mm) per year) (Wiles et al. 2009, p. 10 in O'Shea and Valdez 2009). Thermal characteristics of the interiors of caves show little variability, and relative humidity is high. Humidity measured in four caves on Aguiguan ranged from 92 to 96 percent (O'Shea and Valdez 2009, p. 78 in O'Shea and Valedez 2009). Internal cave temperatures (between caves) vary less than a few degrees, between 79 °F to 82 °F (26 °C to 28 °C), and temperatures within each cave are essentially constant (O'Shea and Valdez 2009, p. 77 in O'Shea and Valedez 2009). No major air movement was detected within caves to indicate any complex thermal patterns (O'Shea and Valdez 2009, p. 77 in O'Shea and Valedez 2009).

Cave sizes range from small (less than 49 ft (15 m) long and 538 ft^2 (50 m^2)) in floor area, with low rock overhangs, narrow vertical crevices, various cavities at the base of cliffs or under large boulders; to medium (538 ft^2 to 1,076 ft^2 (50 to 100 m^2) in floor area, with wider rooms; to large (over 1,076 ft^2 (100 m^2)) in floor area, with ceiling heights reaching 16 to 98 ft (5 to 30 m)) (Wiles et al. 2009, p. 11 in O'Shea and Valdez 2009).

Cave ecosystems suitable for the Pacific sheath-tailed bat should be within or near mature native forest, to provide an attainable food source (Wiles et al. 2009, p. 10 in O'Shea and Valdez 2009; Gorresen et al. 2009, p. 44 in O'Shea and Valdez 2009). Pacific sheath-tailed bats prefer the larger caves, if available (Wiles et al. 2009, p. 15 in O'Shea and Valdez 2009), but may also be found in smaller caves, especially where there may be less disturbance (e.g., use by goats or humans).

One of the 23 species proposed for listing as endangered in this rule, the Pacific sheath-tailed bat, depends on the cave ecosystem for its life-history needs.

Stream Ecosystem

Streams can be a part of a wetland ecosystem; however, for this proposed rule, we discuss only the more narrowly defined stream ecosystem. Only one species addressed in this rule is found in the stream ecosystem, the Rota blue damselfly, which occurs only on Rota.

Only two of the Mariana Islands have permanent streams, Guam and Rota. Guam has 14 named watersheds with more than 100 streams and rivers (WERI–IREI 2014, in litt.). Saipan has a brackish-water lake, Lake Susupe. Intermittent headwaters originating from Mount Tagpochau and the Fina Sisu ridge during heavy rains provide water to the lake, but there are no permanent streams on Saipan (Wong and Hill 2000, p. 1). Currently on Tinian, there are no permanent streams, and only one functional wetland, Lake Hagoi (Stinson 1995, in litt.). The limestone substrate of these southern islands is very porous, and rain that falls is evaporated, consumed by plants, runs directly off the land surface into the ocean, or recharges ground water (Carruth 2003, p. 13). The northern islands are not known to have permanent streams; however, Pagan has a freshwater lake with hot sulfur springs, and a small brackish-water lake (Guam.net, *http://www.guam.net/pub/sshs/depart/science/mancuso/marianas/pagan/pagan.htm,* accessed April 30, 2014).

The western end of Rota is dominated by the ''Sabana'' region, which is an irregular plateau 1,300 ft (400 m) high, 2.5 mi by 1.6 mi (4 km by 2.5 km), with two prominent peaks nearly 1,600 ft (500 m) high. The Sabana area is very porous, with internal caves, and any ponding water after a rainfall event filters quickly into the substrate, leaving ephemeral streams (Keel et al. 2007, pp. 12–16). The east, north and west of the plateau gradually drops off in a series of terraces. The south side of the plateau has steep cliffs in the Talakhaya area, with springs and the only surface streams on the island (Keel et al. 2007, p. 3). The stream ecosystem on Rota encompasses these streams and springs in the Talakhaya area, and is the only known location of the Rota blue damselfly (as described in ''*Animals*—Rota Blue Damselfly,'' below).

On Rota, there is a distinct rainy season from July through December, with an average annual rainfall of 102 in (2600 mm). Ambient temperature averages 81 °F (27 °C) (see ''Islands in the Mariana Archipelago,'' above). The rainy season and rainfall amounts can dramatically change (become drier) due to the El Niño-Southern Oscillation (ENSO) which also affects stream levels (Keel et al. 2007, p. 6).

The vegetation along the streams consists primarily of mature, tall-canopied, native limestone forest (Keel et al. 2007, p.10; U.S. Forest Service 2014, in litt.). The vegetation type and components are further described in Forest Ecosystem, above.

The Talakhaya Springs within the Sabana Watershed are used as a primary domestic water source. The springs consist of Water Cave (also known as Matan Hanum Spring) and As Onon Spring. The municipal water is obtained by gravity flow from these two springs (up to 1.8 million gallons a day (2.8 cubic feet per second)) (Keel et al. 2007, pp. 1, 5; Stafford et al. 2002, p. 17). Under ordinary climatic conditions, this area supplies water in excess of demand but ENSO-induced drought conditions can lead to significantly reduced discharge, or may completely dewater the streams (Keel et al. 2007, pp. 3, 6, 19). In 1998, water captured from the

springs was inadequate for municipal use, and water rationing was instituted (Keel et al. 2007, p. 6). As the annual temperature rises resulting from global climate change, other weather regime changes such as increases in droughts, floods, and typhoons will occur (Giambelluca et al. 1991, p. iii). Increasing night temperatures cause a change in mean precipitation, with increased occurrences of drought cycles (Loope and Giambelluca 1998, pp. 514–515; Emanuel et al. 2008, p. 365; U.S. Global Change Research Program (US–GCRP) 2009, pp. 145–149, 153; Keener et al. 2010, pp. 25–28; Finucane et al. 2012, pp. 23–26; Keener et al. 2012, pp. 47 – 51).

The limestone substrate of Rota is porous, with filtration through central Sabana being the sole water source for the few streams on the island and for human use. There are no other ground water supplies on the island, and limited storage capacity. The Rota blue damselfly is dependent upon any water that escapes the Talakhaya Springs naturally, what is not already removed for human use. The likelihood of dewatering of the Talakhaya Springs is high due to climate change causing increased ENSO conditions, and increased human demand. The ''Public and Agency Participation'' section of the Comprehensive Wildlife Conservation Strategy for the Commonwealth of the Northern Mariana Islands (2005, p. 347) cites ''individuals state the the Department of Public Works has been increasing their water extraction from Rota's spring/stream systems. Historically, this water source flowed year-around, yet now they are essentially dry most of each year.'' See the species description in ''Rota blue damselfly,'' below, and the ''Water Extraction'' section under *Factor E. Other Natural or Manmade Factors Affecting Their Continued Existence,* below, for further discussion.

Description of the 23 Mariana Islands Species

Plants

In order to avoid confusion regarding the number of populations of each species (i.e., because we do not consider an individual plant to represent a viable population), we use the word ''occurrence'' instead of ''population.'' Additionally, we use the word occurrence to refer only to wild (i.e., not propagated and outplanted) individuals because of the uncertainty of the persistence to at least the second generation (F2) of the outplanted individuals. A population consists of mature, reproducing individuals forming populations that are self-sustaining. Also, there is a high potential that one or more of the outplanted populations may be eliminated by normal or random adverse events such as fire, nonnative plant invasion, or disease, before a seed bank can be established.

Bulbophyllum guamense (cebello halumtano), an epiphyte in the orchid family (Orchidaceae), is known from widely distributed occurrences on the southern Mariana Islands of Guam and Rota, in the forest ecosystem (Ames 1914, p. 13; Raulerson and Rinehart 1992, p. 90; Costion and Lorence 2012, pp. 54, 66; Global Biodiversity Information Facility (GBIF) 2012a–*Online Herbarium Database*). *Bulbophyllum guamense* was recorded historically on Guam from clifflines encircling the island, and on the slopes of Mt. Lamlam and Mt. Almagosa. As recently as 1992, this species was reported to occur in large mat-like formations on trees ''all over the island,'' (Guam) (Raulerson and Rinehart 1992, p. 90). Currently, numbers have declined dramatically, and there are only 4 known occurrences (3 on Guam and 1 on Rota) totaling fewer than 250 individuals on Guam and fewer than 30 individuals on Rota. Historically, this species also occurred on Pagan (last observed in 1984) and Saipan (last observed in 1970). *Bulbophyllym guamense* has thus been lost from two of the four islands where it formerly occurred, and only a few small populations of the species remain on Guam and Rota. The remaining individuals of *B. guamense* are vulnerable to the effects of continued habitat loss and destruction from agriculture, urban development, nonnative animals and plants, fires, and typhoons, combined with predation by nonnative invertebrates such as slugs.

Cycas micronesica (fadang), a cycad in the cycad family (Cycadaceae), is known from Guam, Rota, and Pagan, as well as Palau (politically the independent Republic of Palau) and Yap (geographically part of the Caroline Islands; politically part of the Federated States of Micronesia), in the forest ecosystem (Hill et al. 2004, p. 280; Keppel et al. 2008, p. 1,006; Cibrian-Jaramillo et al. 2010, pp. 2,372–2,375; Marler 2013, in litt.).

Just 10 years ago, *Cycas micronesica* was ubiquitous on the island of Guam, and similarly common on Rota. *Cycas micronesica* is currently under attack by a nonnative insect, the cycad aulacaspis scale (*Aulacaspis yasumatsui*) that is causing rapid mortality of plants at all locations (Marler 2014, in litt.). As of January 2013, *C. micronesica* mortality reached 92 percent on Guam, and cycads on Rota are experiencing a similar fate (Marler 2013, in litt.). All seedlings of *C. micronesica* in a study area were observed to die within 9 months of infestation by *C. yasumatsui* (see *Factor C. Disease and Predation,* below for further discussion) (Marler and Muniappan 2006, p. 3; Marler and Lawrence 2012, p. 233; Marler 2013, pers. comm.; Western Pacific Tropical Research Center 2012, p. 4).

Currently, there are 15 to 20 occurrences of *Cycas micronesica* totaling 900,000 to 950,000 individuals on the Micronesian Islands of Guam, Rota, Pagan, Yap, and Palau. On Guam and Rota there are fewer than 630,000 (Marler 2013, pers. comm.). These totals do not distinguish between successfully reproducing adults and juveniles (Marler 2013, pers. comm.), which, because of the effects of the cycad aulacaspis scale, implies that the number of extant individuals that can successfully reproduce is much lower. On Guam, there are four fragmented occurrences, totaling fewer than 516,000 individuals: one occurrence along the shoreline to the base of the limestone cliffs on the north side; a second occurrence beginning at the forest edge along the cliffs and continuing into the forest on the north side; a third occurrence on the northern plateau; and a fourth occurrence along the ravines and rock outcrops on the southern side, with a few individuals occurring across the savanna.

On Rota, there are four known occurrences within the forest ecosystem, totaling fewer than 111,500 individuals (Marler 2013, in litt.). On the northeast shore the first occurrence totals fewer than 25,500 individuals; the second occurrence, on the northwest shore, totals fewer than 21,600 individuals; the third occurrence on the south shore totals fewer than 63,600 individuals; and the fourth occurrence on Wedding Cake peninsula totals fewer than 300 individuals.

There are likely a relatively limited number of individuals of *Cycas micronesica* on Pagan. In recent surveys, Pratt (2011, pp. 33–42) reported finding representatives of the species in a ravine on the southwestern part of the island.

Yap consists of a group of four islands, three of which are separated by water but share a common reef, with a total land area of 39 mi^2 (102 km^2). On Yap, there are three occurrences of *Cycas micronesica* totaling 288,450 individuals (Marler 2013, in litt). Palau consists of three larger islands, Babeldaob, Koror, and Ngeruktabel, and between 250 and 300 smaller islands referred to as the ''Rock Islands.'' The

total land area is 177 mi² (458 km²). On Palau, four occurrences of *C. micronesica* total fewer than 2,500 individuals: (1) two occurrences on Ngeruktabel Island total fewer than 900 individuals, (2) one occurrence on Ngesomel Island totals fewer than 600 individuals, and (3) possibly as many as 1,000 individuals scattered on the Rock Islands (Marler 2013, in litt.). The aulacaspis scale was observed on the main islands of Palau in 2008 (Marler 2014, in litt.), and is expected to reach Yap as well (Marler 2013, in litt.).

Protecting and preserving *Cycas micronesica* on the islands of Guam and Rota is important, as it is an integral component of the forest ecosystem, and over 50 percent of the known individuals occur on these islands. The nonnative cycad aulacaspis scale quickly causes mortality of all life stages of *C. micronesica,* preventing reproduction of *C. micronesica,* and leading to its extirpation (see *Factor C. Disease and Predation,* below). The magnitude of the ongoing threats of predation by the scale and nonnative animals, secondary infestations by other insects, and loss of habitat due to development, typhoons, climate change, and direct damage and destruction by military live-fire training is large, and these threats are imminent. Although *C. micronesica* presently is found in relatively high numbers, the factors affecting this species can result in very rapid mortality of large numbers of individuals. A study by Marler and Lawrence (2012) shows that if the ongoing negative population density trajectory for *C. micronesica* established over 4 years is sustained, extirpation of *C. micronesica* from Guam and Rota will occur by 2019.

Dendrobium guamense (no common name (NCN)), an ephiphyte in the orchid family (Orchidaceae), is known from Guam, Rota, and Tinian, in the forest ecosystem (Ames 1914, p. 14; Raulerson and Rinehart 1992, p. 98; Costion and Lorence 2012, p. 66). As recently as the 1980s, this species was common in trees on Guam and Rota, with more than 12 occurrences on Guam and 17 occurrences on Rota (Bishop Museum 2013—*Online Herbarium Database;* Consortium Pacific Herbarium (CPH) 2012a—*Online Herbarium Database,* 5 pp.). Currently, there are 9 occurrences totaling approximately 550 individuals distributed among these islands. On Guam, there are 4 occurrences totaling fewer than 250 individuals (Harrington et al. 2012, in litt). On Rota, there are 4 occurrences of *D. guamense,* totaling fewer than 300 individuals (Harrington et al. 2012, in litt). There is one reported occurrence on the island of Tinian, with an unknown number of individuals (Quinata et al. 1994, p. 8; CPH 2012a—*Online Herbarium Database,* 5 pp.). Historically, *D. guamense* was also known from Saipan, in the forest ecosystem (CPH 2012a—*Online Herbarium Database,* 5 pp.). Formerly relatively common, the remaining populations of *D. guamense* and habitat for its reintroduction to Saipan are at risk; *D. guamense* populations are decreasing on Guam, Rota, and Tinian, and both the species and its habitat continues to be negatively affected by continued habitat loss and destruction from agriculture, urban development, nonnative animals and plants, fires, and typhoons, combined with predation by nonnative invertebrates such as slugs.

Eugenia bryanii (NCN), a perennial shrub in the Myrtle family (Myrtaceae), is known only from Guam. Historically, *E. bryanii* occurred on windy, exposed clifflines along the west and east coasts of the island, and from along the Pigua River, in the forest ecosystem (Costion and Lorence 2012, p. 82; Gutierrez 2012, in litt.). Currently, *E. bryanii* is known from 5 occurrences totaling fewer than 420 individuals (Gutierrez 2014, in litt.). Populations of *E. bryanii,* a single island endemic, are decreasing from initial numbers observed on Guam, and these remaining small populations are at risk, due to continued habitat loss and destruction from agriculture, urban development, nonnative animals and plants, and typhoons, combined with herbivory by deer.

Hedyotis megalantha (paudedo), a perennial herb in the coffee family (Rubiaceae), is known only from the savanna ecosystem on Guam. Historically, *H. megalantha* was reported solely from Guam; however, because several herbarium records reported this species on Rota and Saipan, we investigated other reports and taxonomic and genetic analyses concerning the range of this species. We believe the Rota and Saipan reports are misidentifications of one or more of the other *Hedyotis* species also found in the Mariana Islands (Fosberg et al. 1993, pp. 63–79; CPH 2012b—*Online Herbarium Database;* World Checklist of Select Plant Families (WCSP) 2012a—*Online Herbarium Database*). Between 1911 and 1966, this species ranged from the mid-central mountains and west coast of Guam, south to Mt. Lamlam (Bishop Museum 2013-*Online Herbarium Database*). Currently, *H. megalantha* is known from one large scattered occurrence totaling fewer than 1,000 individuals on southern Guam (Costion and Lorence 2012, pp. 54, 86; Gutierrez 2012, in litt.; Bishop Museum 2013—herbarium database; Gutierrez 2013, in litt.). *Hedyotis megalantha* typically occurs as lone individuals rather than in patches or groups (Gutierrez 2013, in litt.). In sum, the single known occurrence of *H. megalantha,* a single island endemic, is decreasing from initial numbers observed on Guam, and the remaining individuals are at continued risk due to ongoing habitat loss and destruction from agriculture, urban development, nonnative animals and plants, fires, and typhoons, combined with habitat destruction and direct damage by recreational vehicles.

Heritiera longipetiolata (ufa-halomtano; looking glass tree), a tree in the hibiscus family (Malvaceae), is known only from the Mariana Islands. A few herbarium records have cited *H. longipetiolata* on Palau, Chuuk, Pohnpei, and the Eastern Caroline Islands; however, upon a thorough review of the literature and herbarium records, and conferring with local botanical experts, we conclude that these few outlying occurrences are actually *H. littoralis,* not *H. longipetiolata* (Stone 1970, pp. 23, 420–421; Raulerson and Rinehart 1991, p. 94; Wiles 2012, in litt.; Center for Plant Conservation 2010, in litt.; CPH 2012c—*Online Herbarium Database;* GBIF 2014—*Online Herbarium Database;* Harrington et al. 2012, in litt.; Lorence 2013, in litt.).

Historically, *Heritiera longipetiolata* is reported from Guam, Rota, Saipan, and Tinian, in the forest ecosystem (Stone 1970, p. 420; Raulerson and Rinehart 1991, p. 94; CPH 2012c—*Online Herbarium Database;* GBIF 2014—*Online Herbarium Database*). By 1997, there were about 1,000 individuals on Guam, several hundred on Tinian, and fewer than 100 on Saipan, with none observed on Rota (Wiles in Internation Union for Conservation of Nature (IUCN) Red List 2014, in litt.). Currently, *H. longipetiolata* is known from 9 occurrences totaling fewer than 160 individuals, on Guam, Saipan, and Tinian, all within the forest ecosystem (M and E Pacific, Inc., pp. 6, 8, 31, 78; Harrington et al. 2012, in litt; Grimm 2013, in litt). On Tinian, *H. longipetiolata* is known from fewer than 10 individuals (Williams 2013, in litt.). On Saipan, *H. longipetiolata* is known from 3 occurrences, totaling fewer than 30 individuals. Wiles stated that there is strong evidence that *H. longipetiolata* is not regenerating, and that seedlings and seeds are eaten by ungulates and crabs (Wiles in IUCN Red List 2014, in litt.). *Heritiera longipetiolata* is on Guam's endangered species list, listed as Vulnerable on IUCN's Red List of

Threatened Species, and is also a species of concern for Guam's Plant Extinction Prevention Program. The remaining populations of *H. longipetiolata* persist only in small numbers, and are decreasing from initial numbers observed on Guam, Saipan, and Tinian. With fewer than 200 individuals remaining across three islands, the species *Heritiera longipetiolata* and habitat for the recovery of the species on Rota are at risk due to ongoing habitat loss and destruction from agriculture, urban development, nonnative animals and plants, and typhoons. Herbivory by pigs and deer, and habitat and direct destruction by military live-fire training also contribute to the decline of *H. longipetiolata.*

Maesa walkeri (NCN), a shrub or small tree in the primrose family (Primulaceae), is found only in the Mariana Islands. Historically, *M. walkeri* is known from the islands of Guam and Rota, within the forest ecosystem (Fosberg and Sachet 1979, pp. 368–369; Raulerson and Rinehart 1991, p. 67; M and E Pacific, Inc. 1998, pp. 31, 79; Costion and Lorence 2012, p. 84; CPH 2012d—*Online Herbarium Database;* GBIF 2012b—*Online Herbarium Database;* Wagner et al. 2012—*Flora of Micronesia*). Several voucher specimens (preserved and labeled representative whole plants or plant parts, used to compare and correctly identify plant species, usually kept as part of an herbarium collection) report *M. walkeri* from the Carolinian Island of Pohnpei, but after careful review of the best available data (cited above) we conclude that *M. walkeri* is endemic to the Mariana Islands. Historically, *M. walkeri* was known from at least 13 occurrences on Guam and 9 occurrences on Rota (Bishop Museum 2014—*Online Herbarium Database*). Currently, *M. walkeri* is known from 4 occurrences in the forest ecosystem on Guam and Rota, totaling fewer than 60 individuals. On Guam, there are two individuals (M and E Pacific, Inc. 1998, pp. 31, 79; Grimm 2013, in litt.). On Rota, *M. walkeri* is known from 2 occurrences totaling approximately 50 individuals (Harrington et al. 2012, in litt.; Gawel 2013, in litt.). *Maesa walkeri* is also a species of concern for Guam's Plant Extinction Prevention Program.

In summary, the species *Maesa walkeri* is vulnerable to extinction due to its very limited numbers, totaling fewer than 60 individuals (with only 2 on Guam). The remaining populations of *M. walkeri* are decreasing from initial numbers observed on Guam and Rota, and continue to be affected by ongoing habitat loss and destruction from agriculture, urban development, nonnative animals and plants, fires, and typhoons. The impacts on the species are exacerbated by the effects of low numbers of individuals resulting in loss of vigor and genetic representation, which limits its ability to compete with other species and adapt to changes in environmental conditions.

Nervilia jacksoniae (NCN), a small herb in the orchid family (Orchidaceae), is found only in the Mariana Islands. Historically, *N. jacksoniae* occurred on the islands of Guam and Rota, in the forest ecosystem, and ranged from northern to central Guam and only the southwestern point of Rota (Rinehart and Fosberg 1991, pp. 81–85; Raulerson and Rinehart 1992, p. 118; Costion and Lorence 2012, p. 67). Currently, there are approximately 15 occurrences totaling at least 520 individuals on the islands of Guam and Rota, in the forest ecosystem (Harrington et al. 2012, in litt.). On Guam, *N. jacksoniae* is known from 2 occurrences totaling fewer than 200 individuals (M and E Pacific, Inc. 1998, p. 58; Grimm 2012, in litt.; McConnell 2012, pers. comm.). On Rota, *N. jacksoniae* is known from 13 scattered occurrences totaling at least 320 individuals in the forest ecosystem (Rinehart and Fosberg 1991, pp. 81–85; Raulerson and Rinehart 1992, p. 118; Costion and Lorence 2012, p. 67; CPH 2012e—*Online Herbarium Database;* GBIF 2012c—*Online Herbarium Database;* McConnell 2012, pers. comm.). Populations of *N. jacksoniae* are decreasing from initial numbers observed on Guam and Rota and are at risk of further losses due to continued habitat loss and destruction from agriculture, urban development, nonnative animals and plants, fires, and typhoons, combined with predation by nonnative invertebrates such as slugs.

Phyllanthus saffordii (NCN), a woody shrub in the Phyllanthaceae family, is historically known only from the southern part of Guam within the savanna ecosystem. Several literature and database sources report this species from the northern Mariana Islands (Costion and Lorence 2012, pp. 82–83; Wagner 2012—*Flora of Micronesia;* U.S. Department of Agriculture–Agricultural Research Service–Germplasm Resources Information Network (USDA–ARS–GRIN) 2013—*Online Database;* WCSP 2012b—*Online Database*); however, a thorough review of the literature, databases, and herbaria records revealed recorded occurrences only on Guam (Merrill 1914, pp. 104–105; Glassman 1948, p. 181; Stone 1970, pp. 387–388; Pratt 2011, p. 59; Gutierrez 2012, in litt.; GBIF 2012d—*Online Herbarium Database;* Bishop Museum 2013—*Online Herbarium Database;* Smithsonian Institution 2014–*Flora of Micronesia Database*). Until the early 1980s, *P. saffordii* ranged from central to southern Guam (Bishop Museum 2014—*Herbarium Database*). Currently, *P. saffordii* is known from 4 scattered occurrences on southern Guam, totaling fewer than 1,400 individuals (Gutierrez 2013, in litt.; Gawel et al. 2013, in litt.). In summary, populations of *P. saffordii,* a single island endemic, are decreasing from initial numbers observed on Guam and are at risk, due to continued habitat loss and destruction from agriculture, urban development, nonnative animals and plants, fires, and typhoons, combined with habitat destruction and direct damage by recreational vehicles.

Psychotria malaspinae (aplokhating-palaoan), a shrub or small tree in the coffee family (Rubiaceae), is known only from Guam. Historically, *P. malaspinae* was known from scattered occurrences on the northeastern and southwestern sides of Guam, in the forest ecosystem (Merrill 1914, pp. 148–149; Stone 1970, pp. 554–555; Raulerson and Rinehart 1991, p. 83; Fosberg et al. 1993, pp. 111–112; Costion and Lorence 2012, pp. 54, 85–86; Bishop Museum 2014—*Online Database;* Wagner 2012—*Flora of Micronesia;* WCSP 2012c—*Online Database*). Currently, *P. malaspinae* is known from only three occurrences, each of a single individual (M and E Pacific, Inc. 1998, pp. 67, 79). None of these individuals has been observed within the last 5 years. Biologists searched for this species during rare plant surveys conducted in July 2012; however, none were located (Harrington et al. 2012, in litt.). A specimen collected from the Ritidian National Wildlife Refuge on Guam in August 2013 is currently pending identification (Gawel et al. 2013, in litt.). *Psychotria malaspinae* is also a species of concern for Guam's Plant Extinction Prevention Program.

The species *Psychotria malaspinae,* a single island endemic, has been reduced to three known individuals in the wild, rendering this species vulnerable to extinction. These remaining individuals are at risk, due to continued habitat loss and destruction from agriculture, urban development, nonnative animals and plants, and typhoons. Herbivory by pigs and deer, combined with the effects of low numbers of individuals, which results in loss of vigor and genetic representation, and limits its ability to compete with other species and adapt to changes in environmental conditions, contribute to the decline of *P. malaspinae.*

Solanum guamense (berenghenas halomtano), a small shrub in the

nightshade family (Solanaceae), is known only from the Mariana Islands (Merrill 1914, pp. 139–140; Stone 1970, p. 521; Costion and Lorence 2012, p. 89). Historically, *S. guamense* was reported from Guam, Rota, Saipan, Tinian, Asuncion, Guguan, and Maug (Stone 1970, p. 521; GBIF 2012e—*Online Database;* Bishop Museum 2014—*Online Database*). Currently, *S. guamense* is known from a single occurrence of one individual on Guam, in the forest ecosystem (Perlman and Wood 1994, pp. 135–136).

Once ranging across multiple islands, *Solanum guamense* is now vulnerable to extinction, the species having been reduced to a single remaining individual on Guam. This species, and habitat for its reintroduction to Rota, Saipan, Tinian, Asuncion, Guguan, and Maug, are at risk, due to continued habitat loss and destruction from agriculture, urban development, nonnative animals and plants, and typhoons. Herbivory by pigs and deer, combined with the effects of low numbers of individuals, which results in loss of vigor and genetic representation and limits its ability to compete with other species and adapt to changes in environmental conditions, contribute to the decline of *S. guamense.*

Tabernaemontana rotensis (NCN), a small to medium-sized tree in the dogbane family (Apocynaceae), is historically known from Guam and Rota, in the forest ecosystem (University of Guam (UOG) 2007, p. 6). The genus is widespread throughout tropical and subtropical regions. In 2004 (69 FR 1560, January 9, 2004), we proposed to list *T. rotensis;* however, in April 2004 (69 FR 18499) we did not list *T. rotensis* because an authoritative monographic work on the genus submerged this species in an expansive interpretation of the widespread species *T. pandacaqui.* In 2011, a genetic study was conducted on specimens from Rota, Guam, Asia, and the Pacific, to determine if those individuals on the Mariana Islands are a monophyletic lineage. The study determined that *T. rotensis* is a valid species, distinct from the widespread *T. pandacaqui* (Reynaud 2012, 27 pp. + appendices). In 2004, *T. rotensis* was known from 8 individuals on Rota, and at least 250 individuals on Guam. In 2007, more than 21,000 individuals were found throughout Andersen AFB, with a population structure representing seedlings, juveniles, and reproductive, mature individuals (UOG 2007 p. 4). Currently, on Rota, *T. rotensis* is known from two occurrences, each composed of fewer than five individuals (Harrington et al. 2012, in litt.). On Guam, *T. rotensis* is known from 6 occurrences totaling approximately 21,000 individuals (M and E Pacific, Inc. 1998, p. 61; UOG 2007, pp. 32–42).

In summary, populations of *Tabernaemontana rotensis* on Guam and Rota are at risk, due to continued habitat loss and destruction from agriculture, urban development, nonnative animals and plants, fires, and typhoons, combined with vandalism. The greatest concern regarding this species is not of population structure, but the small proximity of occurrences in an area that may be developed according to the proposed AFB and Navy base expansions (UOG 2007, p. 5; JGPO–NavFac Pacific 2010a, 2010b; JGPO–NavFac Pacific 2014).

Tinospora homosepala (NCN), a vine in the moonseed family (Menispermaceae), is historically known only from Guam (Merrill 1914, p. 83; Stone 1970, pp. 27, 277; Costion and Lorence 2012, pp. 92–93). Currently, *T. homosepala* is known from 3 occurrences totaling approximately 30 individuals, in the forest ecosystem (Yoshioka 2008, p. 15; Gawel et al. 2013, in litt.). There is discussion among botanists as to whether or not *T. homosepala* is either the same as a commonly occurring species found throughout Malaysia and the Philippines or a variety of that species (*T. glabra*) (Costion and Lorence 2012, pp. 92–93; Gawel et al. 2013, in litt.). *Tinospora homosepala* differs from *T. glabra* in having equal-sized sepals (petal-like structures of the calyx) as opposed to the outer sepals being much smaller than inner sepals as in *T. glabra* (Costion and Lorence 2012, p. 93; Forman 1981, pp. 381, 417, and 419).

While these discussions note that additional research on the taxonomy of *Tinospora homosepala* is appropriate to address questions, no changes to the currently accepted taxonomy have been proposed, although Forman (1981, p. 419) notes that, if fruits of *T. homosepala* are discovered and are indistinguishable from *T. glabra,* it may be preferable to reduce *T. homosepala* to subspecific rank under *T. glabra.* Regardless, any future reduction in rank from full species status to that of a subspecies or variety would not, in itself, disqualify this taxon from protection under the Act. All known individuals of *T. homosepala* on Guam are said to be males that reproduce clonally (Yoshioka 2008, p. 15; Gawel et al. 2013, in litt.). Clonal reproduction limits genetic diversity, reducing the ability of the species to form new genetic combinations to fit changing environmental conditions (Stebbins 1957, p. 352). In summary, the species *T. homosepala,* a single island endemic, has been reduced to roughly 30 individuals on Guam, and it is possible that no female representatives of this species remain. These few remaining individuals of the species are at risk of extinction, due to continued habitat loss and destruction from nonnative animals and plants, and typhoons, and by genetic limitations as a result of the possible loss of potential sexual reproduction.

Tuberolabium guamense (NCN) (*Trachoma guamense* is a synonym), an epiphyte in the orchid family (Orchidaceae), is known only from the Mariana Islands. Historically, *T. guamense* was reported from the islands of Guam, Rota, Tinian, and Aguiguan (Raulerson and Rinehart 1992, p. 127; CPH 2012f—*Online Herbarium Database;* GBIF 2012f—*Online Database*). The Royal Botanical Gardens at Kew's online database (WCSP 2012d—*Online Database*) describes the range for *T. guamense* as the Mariana Islands and the Cook Islands; however, we were unable to confirm this with herbarium specimens citing the Cook Islands as a site for collection (CPH 2012f—*Online Herbarium Database;* GBIF 2012f—*Online Herbarium Database;* Smithsonian Institution 2014–*Online Herbarium Database*). In 1992, *T. guamense* was found in ''trees and shrubs all over the island'' (Raulerson and Rinehart 1992, p. 127), and the Consortium of Pacific Herbaria has records of 22 collections from Guam, 5 collections from Rota, 15 collections from Tinian, and 3 collections from Aguiguan (CPH 2012f–*Online Herbarium Database*). Currently, *T. guamense* is known from three occurrences: one occurrence of one individual on Guam and two occurrences on Rota, in the forest ecosystem (Gawel et al. 2013, in litt.; Harrington et al. 2012, in litt.).

In summary, populations of *Tuberolabium guamense* are decreasing from initial numbers observed on Guam and Rota, and habitat for its reintroduction to Tinian and Aguiguan is at risk. The remaining few representatives of this species and its habitat are vulnerable to ongoing threats posed by the continued habitat loss and destruction from agriculture, urban development, nonnative animals and plants, fires, and typhoons. Herbivory by slugs, combined with the effects of low numbers of individuals which results in loss of vigor and genetic representation, and limits its ability to compete with other species and adapt to changes in environmental conditions, contribute to the decline of *T. guamense.*

Animals

Pacific Sheath-Tailed Bat

The Pacific sheath-tailed bat (*Emballonura semicaudata rotensis*) is a small insectivorous bat (forearm length about 1.8 in (45 mm), weight 0.2 ounces (oz) (5.5 grams (g)), in the family *Emballonuridae,* an Old World bat family that has an extensive distribution primarily in the tropics (Lemke 1986, pp. 743–745; Nowak 1994, pp. 90–91; Lemke 1986, pp. 743–744; Koopman 1997, pp. 358–359; Wiles and Worthington 2002, pp. 1–3; O'Shea and Valdez 2009, pp. 9–10). The Pacific sheath-tailed bat is a rich brown to dark brown above and paler below (Walker and Paradiso 1983, p. 211). The common name ''sheath-tailed bat'' refers to the nature of the tail attachment: the tail pierces the tail membrane and its tip appears completely free on the upper surface of the membrane (Walker and Paradiso 1983, p. 209).

The Pacific sheath-tailed bat was once common and widespread in Polynesia and Micronesia, and is the only insectivorous bat recorded from a large part of this area (Hutson et al. 2001, p. 138). The classification of the subspecies has received varied treatment, but the most thorough and recent taxonomic evaluation for this subspecies was conducted by Koopman (1997, pp. 358–360). Koopman recognizes four subspecies: *E. s. rotensis,* endemic to the Mariana Islands (Guam and the CNMI); *E. s. sulcata,* occurring in Chuuk and Pohnpei; *E. s. palauensis,* found in Palau; and *E. s. semicaudata,* occurring in American and Independent Samoa, Tonga, Fiji, and Vanuatu. Historically, in the Mariana Islands, the Pacific sheath-tailed bat was known from Guam, Rota, Aguiguan, Tinian, Saipan, and possibly Anatahan and Maug (Lemke 1986, pp. 743–745; Steadman 1999, p. 321; Wiles and Worthington 2002, pp. 1–3). Currently, the Pacific sheath-tailed bat appears to be extirpated from all but one island in the Mariana Islands, Aguiguan, where a single remaining population of this subspecies is estimated to number between 359 to 466 individuals (Wiles and Worthington 2002, p. 15; Wiles 2007, pers. comm.; O'Shea and Valdez 2009, pp. 2–3).

The biology of this subspecies, including reproduction, habitat use, and diet, was, until recently, largely unknown (Wiles and Worthington 2002, p. 19; Esselstyn et al. 2004, p. 304). A study by O'Shea and Valdez (2009, pp. 95–97) reveals more life-history information. Fecal pellets of the Pacific sheath-tailed bat collected from two caves on Aguiguan show these bats consume a diverse array of prey, mostly consisting of small-sized insects including hymenopterans (ants, wasps, and bees), lepidopterans (moths), and coleopterans (beetles) as the three major food items (O'Shea and Valdez 2009, pp. 63–65).

The Pacific sheath-tailed bat appears to be cave-dependent, roosting during the day in a wide range of cave-types, including overhanging cliffs, karst limestone caves, crevices, and lava tubes (Grant et al. 1994, pp. 134–135; O'Shea and Valdez 2009, pp. 105–108). Bats and cave swiftlets (birds, *Aerodramus* spp.) may be found sharing caves (Lemke 1986, pp. 744–745; Tarburton 2002, pp. 106–107; Wiles and Worthington 2002, pp. 7, 13; Lemke 1986, pp. 744–745). Analysis of data collected from echolocation stations deployed across Aguiguan indicates that the bats' peak activity and occurrences are related to canopy cover, vegetation structure, and distance to known roosts; and that native limestone forest is preferred foraging habitat (O'Shea and Valdez 2009, pp. 105–108).

A previous survey of habitat use on Aguiguan in 2003 revealed that bats foraged almost entirely in forests (native and nonnative) near their roosting caves and clearly did not utilize the non-forested habitats on the island (Esselstyn et al. 2004, p. 307). Bruner and Pratt (1979, p. 3) also observed sheath-tailed bats foraging in native forests on Pohnpei. Large roosting colonies appear to be common for the Palau subspecies, but smaller aggregations may be more typical of at least the Mariana Island subspecies and perhaps other *Emballonura* found elsewhere (Wiles et al. 1997, pp. 221–222; Wiles and Worthington 2002, pp. 15, 17). In 1995, roosting bats on Aguiguan were detected in only 5 of 77 caves surveyed (Wiles 2007, pers. comm.), with colony sizes ranging from 2 to 64 individuals. Observations in 2007 indicated that the bats preferred large caves (over 1,076 ft^2 (100 m^2)) in floor area, with ceiling heights reaching 16 to 98 ft (5 to 30 m)) (see ''Cave Ecosystem,'' above, for further cave description), as nearly all of the caves used for roosting were characterized as large by researchers (GDAWR 1995, pp. 95–96; O'Shea and Valdez 2009, pp. 9–17; Wiles and Worthington 2002, pp. 7, 13). The Pacific sheath-tailed bat is nocturnal and typically emerges around dusk to forage on insects (Craig et al. 1993, p. 51; Wiles and Worthington 2002, p. 13).

The Pacific sheath-tailed bat populations have declined drastically in the Mariana Islands, and the subspecies is now known to occur on only Aguiguan. While populations of other Pacific sheath-tailed bat subspecies appear to be healthy in some locations, mainly in the Caroline Islands, they have also declined drastically in other areas, including Independent and American Samoa, and Fiji (Bruner and Pratt 1979, p. 3; Grant et al. 1994, pp. 133–134; Wiles et al. 1997, pp. 222–223; Wiles and Worthington 2002, pp. 17–19). For example, populations of sheath-tailed bats (*E. s. semicaudata*) were noted to precipitously decline from American Samoa in the 1970s (Grant et al. 1994, pp. 133–134). It is speculated that disturbance of caves where the sheath-tailed bats roosted by successive storms contributed to the decline of sheath-tailed bats; however, it was noted that some caves were still inhabited by swiftlets (Grant et al. 1994, p. 134). Other factors contributing to the decline of sheath-tailed bats in American Samoa may include starvation during extended storms, human disturbance of caves, bombing and shelling during World War II, pesticides, and guano mining; however, the exact causes of sheath-tailed bat population declines in the American Samoa and other South Pacific islands are still uncertain (Grant et al. 1994, pp. 135–136). In contrast, large numbers of individuals of the sheath-tailed bat subspecies *E. s. palauensis* were readily observed by Wiles et al. in the 1990s (1997, p. 224).

In summary, the Pacific sheath-tailed bat (*E. s. rotensis*), once found on multiple islands on Guam and the Marianas, has been reduced to a single, small remaining population. The species has exhibited a significant decline from its initial numbers observed on Guam, Rota, Aguiguan, Tinian, Saipan, and its persistence in a single remaining population renders it vulnerable to extinction. The remaining population of the Pacific sheath-tailed bat continues to experience threats due to continued habitat loss and destruction from agriculture, urban development, nonnative animals, and typhoons. In addition, predation by monitor lizards, and possible predation by the brown tree snake, may contribute to the observed decline of the Pacific sheath-tailed bat.

Slevin's Skink

Slevin's skink (*Emoia slevini,* guali'ek halom tano) is a small lizard in the reptile family Scincidae, the largest lizard family in number of worldwide species. Slevin's skink was first described in 1972 by Walter C. Brown and Marjorie V.C. Falanruw, which is the most recent and accepted taxonomy (Brown and Falanruw 1972, p. 107). It

is the only lizard endemic to the Mariana Islands and is on the Government of Guam's Endangered Species List (Fritts and Rodda 1993, p. 3; Rodda et al. 1997, p. 568; Rodda 2002, p. 2; CNMI DFW 2005, p. 174; GDAWR 2006, p. 107; Guam Department of Agriculture 2014, in litt.). Slevin's skink previously occurred on the southern Mariana Islands (Guam, Cocos Island, Rota, Tinian, and Aguiguan), where it is now extirpated, except from Cocos Island off of Guam, where it was recently rediscovered (Fritts and Rodda 1993, p. 2; Steadman 1999; Lardner 2013, in litt.).

Surveys conducted in the 1980s and 1990s show that Slevin's skink was present on the northern islands of Sarigan, Guguan, Alamagan, Pagan, and Asuncion (Berger et al. 2005, pp. 174–175; GDAWR 2006, p. 107; Vogt 1997, in litt.); however, none were captured on Anatahan or Agrihan or ever reported historically from these islands (Berger et al. 2005, p. 175; Rodda et al. 1991, p. 202). The skink has not yet been reported from the southern island of Saipan, or the northern islands of Farallon de Medinilla, Maug, or Uracas. The densest population was on Alamagan (island area of 2,800 ac; 1,130 ha) in the early 1990s, but researchers believe that overgrazing by introduced ungulates may preclude the long-term viability of that population (Rodda 2002, p. 3; Fritts and Rodda 1993, p. 1). The catch rate (number of lizards captured per hour) quadrupled on Sarigan in a survey conducted in 2007, after eradication of feral ungulates from the island in 1998 (Vogt 2007, p. 5–5; Kessler 2011, p. 322). Its current status on Aguiguan, Guguan, Pagan, and Asuncion is unknown.

Slevin's skink measures 3 in (77 mm) from snout to cloaca vent (the opening for reproductive and excretory ducts), although length can vary slightly (Vogt and Williams 2004, p. 65). Fossil remains indicate its prehistoric size was much larger, up to 4.3 in (110 mm) in length (Rodda 2010, p. 3). Slevin's skink is darkly colored, from olive to brown, with darker flecks in a checkerboard pattern, and a light orange to bright yellow underside (Vogt and Williams 2004, p. 65). Their skin tends to be shiny, and is very durable and tough. Juveniles may appear cream-colored (Vogt and Williams 2004, p. 65; Rodda 2010, p. 3).

Slevin's skink is a fast-moving, alert, insectivorous lizard, typically found on the ground or at ground level, and active during the day. Based on both older and more recent observations, the species occurs in the forest ecosystem, with most individuals observed on the forest floor using leaf litter as cover (Brown and Falanruw 1972, p. 110; GDAWR 2006, p. 107; Cruz et al. 2000, p. 21; Lardner 2013, in litt.). Occasionally, individuals were observed in low hollows of tree trunks (Brown and Falanruw 1972, p. 110). It is a social species, seen often in the company of other individuals, including other nonnative skink species (Vogt and Williams 2004, pp. 59, 65). The females carry their eggs internally and give birth to live young (Brown 1991, pp. 14–15). Other specific life-history or habitat requirements of Slevin's skink are not well documented (Rodda 2002, p. 3).

Slevin's skink was most numerous in the Mariana Islands during prehistoric times, before the introduction of other competing lizards and predators, and loss of native forest (Vogt and Williams 2004, p. 65; Berger et al. 2005, p. 175). After World War II, Slevin's skink had notably vanished from the larger southern Mariana Islands (Fritts and Rodda 1993, p. 4), which suggests the species may be sensitive to habitat destruction or changes in land use practices (Fritts and Rodda 1993, p. 4; Berger et al. 2005, p. 174). Slevin's skink had not been recorded on Guam since 1945 or on Cocos Island since the early 1990s (Rodda and Fritts 1992, p. 171; Campbell 2011, in litt.), until a specimen was captured on Cocos Island in January of 2011 (Campbell 2011, pers. comm.). Over half the island is developed for a hotel, and it is a tourist destination (Fritts and Rodda 1993, p. 2). Only about 25 ac (10 ha) of suitable habitat is available on Cocos Island, and it is periodically overwashed during typhoons (Fritts and Rodda 1993, pp. 2, 5). The northern islands of its known occurrence provide less than 19,843 ac (8,030 ha) of land area, not all of which is suitable habitat. Slevin's skink is no longer found on the larger southern islands of Guam, Rota, and Tinian, which combined, provide the largest land area, 179,892 ac (72,800 ha). This species no longer occurs in 90 percent of its historical range.

In summary, once widespread, the remaining known populations of Slevin's skink are made up of a few individuals on Cocos Island, and occurrences of undetermined numbers of individuals on Alamagan and Sarigan. Populations of Slevin's skink are decreasing from initial numbers observed on Cocos Island, Alamagan, Pagan, and Asuncion, and it has not been reobserved on Guam, Rota, Tinian, and Aguiguan; the species has been lost from 90 percent of its former range. The remaining populations of Slevin's skink are at risk, due to continued habitat loss and destruction from agriculture, urban development, nonnative animals, and typhoons. Predation by rats, monitor lizards, and possible predation by the brown tree snake (if the snake is introduced to other islands), also contribute to the decline of Slevin's skink.

Mariana Eight-Spot Butterfly

The Mariana eight-spot butterfly (*Hypolimnas octocula marianensis*), a butterfly in the Nymphalidae family, is known solely from the islands of Guam and Saipan, in the forest ecosystem (Schreiner and Nafus 1996, p. 2; Schreiner and Nafus 1997, p. 26). It may be extirpated from Saipan (Schreiner and Nafus 1997, p. 26). This subspecies was originally described by Butler and is recognized as a distinct taxon in Swezey (1942, p. 35), the most recent and accepted taxonomy for this species. Like most nymphalid butterflies, orange and black are the two primary colors exhibited by this subspecies. The males are smaller than the females by at least a third or more in size. Males are predominantly black with an orange stripe running vertically on each wing. The stripe on the hindwings exhibits small black dots in a vertical row. Overall, the females appear more orange in color than the males, and black bands across the apical (top) margins of both pair of wings are exhibited. Along the inner margin of these black bands, large white spots are exhibited across the entire length of the wings (Schreiner and Nafus 1997, pp. 15, 26–27). The caterpillar larva of this species is black in color with red spikes and a black head, differentiating it from similar-appearing caterpillars including *Hypolimnas bolina, H. anomala,* and *Pipturus* spp. (Schreiner and Nafus 1996, p. 10; Schreiner and Nafus 1997, p. 26).

The larvae of this butterfly feed on two native plants, *Procris pedunculata* (no common name), and *Elatostema calcareum* (tapun ayuyu) (Schreiner and Nafus, 1996, p. 1). Both of these forest herbs (family Urticaceae) are found only on karst substrate within the forest ecosystem, draped over boulders and small cliffs, presumably out of reach of browsing ungulates (Schreiner and Nafus 1996, p. 1; Rubinoff 2013, in litt.). When adult butterflies were observed, they were always in proximity to the host plants (Rubinoff 2011, in litt.; Rubinoff 2013, p. 1). Both of the host plant species are rare in their range, and both plants are believed to be susceptible to feral ungulate grazing based upon anecdotal observations indicating they occur only in the extremely rugged limestone karst terrain believed to be avoided by most

ungulates (Rubinoff 2013, in litt.). The two host plants have been recorded on the islands of Guam, Rota, Saipan, and Tinian (Schreiner and Nafus 1996, p. 2; Schreiner and Nafus 1997, p. 26; Harrington et al. 2012, in litt.; Rubinoff and Haines 2012, in litt.; Rubinoff, in litt. 2013). However, despite recent surveys (2011–2013) on Rota, Tinian, and Saipan, the Mariana eight-spot butterfly is currently known only from the island of Guam (Schreiner and Nafus 1996, p. 2; Schreiner and Nafus 1997, p. 26; Rubinoff and Haines 2012, in litt.; Rubinoff 2013, in litt. 2013). There are 11 known populations of the Mariana eight-spot butterfly on Guam (Schreiner and Nafus 1996, p. 2; Schreiner and Nafus 1997, p. 26; Rubinoff and Haines 2012, in litt.; Rubinoff 2011, in litt.; Rubinoff 2013, in litt.). Several areas were found that supported host plants on Saipan in 1995; however, no individuals of the Mariana eight-spot butterfly were seen, and it may be extirpated on Saipan (Schreiner and Nafus 1997, p. 26).

In summary, the Mariana eight-spot butterfly has been lost from one of the two islands where it formerly occurred. This butterfly is dependent upon two relatively rare host species, both of which are susceptible to the effects of ungulate grazing. The Mariana eight-spot butterfly is vulnerable to the impacts of continued habitat loss and destruction from agriculture, urban development, nonnative animals and plants, and typhoons. Herbivory of its host plants by nonnative animals, combined with direct predation by ants and parasitic wasps, contribute to the decline of the Mariana eight-spot butterfly.

Mariana Wandering Butterfly

The Mariana wandering butterfly (*Vagrans egistina*), is endemic to the islands of Guam and Rota in the Mariana archipelago, in the forest ecosystem. This butterfly was originally named *Issoria egistina* (Swezey 1942, p. 35). In 1934, Hemming published the genus *Vagrans* as a replacement name for the genus *Issoria.* Schriener and Nafus (1997) recognize this species as *Vagrans egistina,* which is the most recent and accepted taxonomy.

Like most nymphalid butterflies, the Mariana wandering butterfly is primarily orange and black in coloration. This species is largely black in appearance with a prominent orange irregular pattern extending from the forewings to the hindwings. Obvious stripes or rows of spots are lacking (Schreiner and Nafus 1997, plate 9). The caterpillar larva life stage of this species is brown in color with black-colored spikes (Schreiner and Nafus 1996, p. 10).

The Mariana wandering butterflies are known to be good fliers, and in earlier times, probably existed as a series of meta-populations (Harrison et al. 1988, p. 360), with considerable movement and interbreeding between local and stable populations and continued colonization and extinction in disparate localities. The larvae of this butterfly feed on the plant species *Maytenus thompsonii* (luluhut) in the Celastraceae family, which is endemic to the Mariana Islands (Swezey 1942, p. 35; Schreiner and Nafus 1996, p. 1). The host plant *M. thompsonii* is known to occur within the forest ecosystem on Guam, Rota, Saipan, and Tinian (Vogt and Williams 2004, p. 121).

Historically, the Mariana wandering butterfly was originally collected and described from the island of Guam where it was considered to be rare, but widespread (Swezey 1942, p. 35). The species has not been observed on Guam since 1979, where it was last collected in Agana. Currently, it is considered likely extirpated from Guam (Schreiner and Nafus 1996, pp. 1–2; Rubinoff 2013, in litt.). The Mariana wandering butterfly was first collected on Rota in the 1980s (Schreiner and Nafus 1996, p. 10). During several 1995 surveys on Rota, it was recorded at only one location among six different sites surveyed (Schreiner and Nafus 1996, pp. 1–2). From June through October 2008, extensive surveys for the Mariana wandering butterfly were conducted on the island of Tinian under the direction of the Service. While several *Maytenus thompsonii* host plant population sites were identified in limestone forest habitat, no life stages of the Mariana wandering butterfly were observed (Hawley in litt., 2009, pp. 1–9).

Although considered extirpated from Guam, whether the Mariana wandering butterfly continues to exist on Rota is unknown, as is its possible occurrence on other islands where its host plants are found. Several years of seasonal surveys are needed to determine the status of this species, but we do know that if it persists, it is likely in very low numbers as it has not been observed in many years. Any remaining populations of the Mariana wandering butterfly continue to be at risk from ongoing habitat loss and destruction by rats and typhoons. Herbivory of its host plant by nonnative animals, combined with direct predation by ants and parasitic wasps, contribute to the decline of the Mariana wandering butterfly.

Rota Blue Damselfly

The Rota blue damselfly (*Ischnura luta*) is a small damselfly endemic to the island of Rota and found within the stream ecosystem. Grouped together with dragonflies in the order Odonata, damselflies fall within the suborder Zygoptera. The Rota blue damselfly belongs to the family Coenagrionidae, and it is the only known damselfly species endemic to the Mariana Islands. This species was first described in 2000 (Polhemus et al. 2000, pp. 1–2) based upon specimens collected in 1996. The species is relatively small in size, with males measuring 1.3 in (34 mm) in body length, with forewings and hindwings 0.7 in (18 mm) and 0.67 in (17 mm) in length, respectively. Both sexes are predominantly blue in color, particularly the thorax and portions of the male's abdomen are brilliant, iridescent blue. Both sexes have a yellow and black head with some yellow coloration on the abdomen. Females of this species may be distinguished by their slightly smaller size and somewhat paler blue body color (Polhemus et al. 2000, pp. 1–8).

Resembling slender dragonflies, damselflies are readily distinguished by their trait of folding their wings parallel to the body while at rest rather than holding them out perpendicular to the body. The general biology of narrow-winged damselflies includes territorial males that guard areas of habitat where females will lay eggs (Moore 1983a, p. 89; Polhemus and Asquith 1996, pp. 2–7). During copulation, and often while the female lays eggs, the male grasps the female behind the head with terminal abdominal appendages to guard the female against rival males; thus males and females are frequently seen flying in tandem. Adult damselflies are predaceous and feed on small flying insects such as midges and other flies.

The immature larval life stages (naiads) of the vast majority of damselfly species are aquatic, breathe through flattened abdominal gills, and are predaceous, feeding on small aquatic invertebrates or fish (Williams 1936, p. 303). Females lay eggs in submerged aquatic vegetation or in mats of moss or algae on submerged rocks, and hatching occurs in about 10 days (Williams 1936, pp. 303, 306, 318; Evenhuis et al. 1995, p. 18). Naiads may take up to 4 months to mature (Williams 1936, p. 309), after which they crawl out of the water onto rocks or vegetation to molt into winged adults, typically remaining close to the aquatic habitat from which they emerged. Adults have only been observed in association with the single perennial stream on Rota; therefore, we

believe the larval stage of the Rota blue damselfly is aquatic.

The Rota blue damselfly was only first discovered in April 1996, when a few individuals were observed and one male and one female specimen were collected outside the Talakhaya Water Cave (also known as Sonson Water Cave) located below the Sabana plateau (Polhemus et al. 2000, pp. 1–8; Camacho et al. 1997, p. 4). The size of the population at the time of discovery was estimated to be small and limited to the stream area near the mouth of the cave. The primary source of the stream is springwater emerging at the limestone-basalt interface below the highly permeable limestone of the Sabana plateau (Polhemus et al. 2000, pp. 1–8; Keel et al. 2011, p. 1). This spring water also serves as the main source of fresh water supply for the population of Rota (Polhemus et al. 2000, pp. 1–8; Keel et al. 2011, p. 1). A concrete collection structure with associated piping has been built into and surrounding the entrance of the water cave. This catchment system and a smaller, adjacent catchment deliver approximately 2.7 to 3.8 million liters-per-day (0.7 to 1 million gallons) of water to Rota's municipal system (Keel et al. 2011, pp. 29–30) (see ''Stream Ecosystem,'' above, and *Factor E. Other Natural or Manmade Factors Affecting Their Continued Existence,* ''Water Extraction,'' below, for further discussion).

Eighteen years elapsed between the original discovery of the species in 1996 and the next known survey for the Rota blue damselfly. In January 2014, two male specimens were observed flying above a portion of the stream located at approximately 770 ft (235 m) in elevation, and below the Talakhaya (Sonson) Water Cave (Richardson 2014, in litt.). No specimens were observed immediately in the vicinity of the water cave entrance, and no fish were observed in the stream immediately below the cave entrance (Richardson 2014, in litt.), a notable observation because many damselfly species endemic to Pacific islands are known to be susceptible to predation by nonnative fish species that eat the naiad life stage of the damselfly. Predation by nonnative fish is a serious threat to the Hawaiian *Megalagrion* damselfly naiads (Englund 1999, pp. 235–236). Eggs laid in vegetation or on rocks in streams hatch in about 10 days and develop into naiads. Naiads take approximately 4 months to mature before emerging from the water (Williams 1936, pp. 303, 306, 309, 318).

Fish predation has been an important factor in the evolution of behavior in damselfly naiads in continental systems (Johnson 1991, p. 8), and damselflies in the wider-ranging *Ishnura* (as opposed to the Hawaiian *Megalagrion*) may have developed avoidance behaviors (Polhemus 2014, pers. comm.). On a survey of the stream (Okgok River, also known as Babao) fed by the Talakhaya (Sonson) Water Cave, the presence of four native fish species was noted: The eel *Anguilla marmorata,* the mountain gobies *Stiphodon elegans* and *Sicyopus leprurus,* and the flagtail, or mountain bass, *Kuhlia rupestris* (Camacho et al. 1997, p. 8). Densities of these native fish were low, especially in areas above the waterfall. Gobies can maneuver in areas of rapidly flowing water by using ventral fins that are modified to form a sucking disk (Ego 1956, in litt.). The flagtails were only abundant in the lower reach of the stream. Freshwater gobies in Hawaii are primarily browsers and bottom feeders, often eating algae off rocks and boulders, with midges and worms being their primary food items (Ego 1956, in litt.; Kido et al. 1993, p. 47). It can only be speculated that the Rota blue damselfly may have adapted its behavior to avoid the benthic feeding habits of native fish species. The release of aquarium fish into streams and rivers of Guam is well documented, but currently, no nonnative fish have been found in the Rota stream (Tibbatts 2014, in litt.).

The Rota blue damselfly appears to be extremely limited in range and researchers remain perplexed by its absence from other Mariana Islands (Polhemus et al. 2000, p. 8). Particularly striking is the fact that it has never been collected on Guam, despite the islands' larger size and presence of over 100 rivers and streams. The Rota blue damselfly's population site is afforded some protection from human impact by its remote and relatively inaccessible location; however, a reduction or removal of stream flow due to increased interception for municipal usage, and from lower water quantities resulting from the effects of climate change, could eliminate the only known population of the species (See ''Stream Ecosystem,'' above, and *Factor E. Other Natural or Manmade Factors Affecting Their Continued Existence,* below, for further discussion). Introduction of nonnative fish into the stream could also impact or eliminate the Rota blue damselfly naiads, leading to its extirpation. In addition, low numbers of individuals result in loss of vigor and genetic representation and contribute to the decline of the Rota blue damselfly.

Humped Tree Snail

The humped tree snail (*Partula gibba;* akaleha), in the Partulidae family, is endemic to the forest ecosystem on the Mariana Islands of Guam, Rota, Aguiguan, Saipan, Tinian, Anatahan, Sarigan, Alamagan, and Pagan. The humped tree snail was first collected on Guam in 1819 by Quoy and Gaimard during the Freycinet Uranie expedition of 1817–1819 and was once considered the most abundant tree snail on Guam (Crampton 1925, pp. 8, 25, 60). Currently, the humped tree snail is known from the islands of Guam (Hopper and Smith 1992, p. 81; Smith et al. 2009, pp. 10, 12, 16), Rota (Smith 1995, p. 1; Bauman 1996, pp. 15, 18), Saipan (Hadfield 2010, pp. 20–21), Sarigan (Hadfield 2010, p. 21) Alamagan (Bourquin 2002, p. 30), and Pagan (Hadfield 2010, pp. 8–14), in the forest ecosystem. The humped tree snail may occur on Aguiguan, but was not located on a survey by Smith in 2006 (Smith 2013, p. 14). It is believed that this species is no longer extant on Tinian due to loss of habitat to agriculture and the introduction of nonnative snails (Smith 2013, p. 24), and that it is no longer extant on Anatahan due to volcanic activity in 2003 and 2005 (Kessler 2011, pp. 321, 323).

The shell of the humped tree snail can be left- or right-coiling, conic-ovate, translucent, and engraved longitudinally with equal lines. The color ranges from white to brown, and has a pointed apex colored rose-red, with a milky white suture. Adult snails are from 0.6 to 0.7 in (14 to 18 mm) long, and 0.4 to 0.6 in (10 to 14 mm) wide, with 4 ½ whorls, the last of which is the largest (Pilsbry 1909–1910 in Crampton 1925, p. 60; Smith et al. 2009, p. 2). In general, partulid snails reproduce in less than 1 year, at which time they can produce up to 18 young each year, and may live up to 5 years. The humped tree snail is oviviparous (gives birth to live young). They are generally nocturnal, live on bushes or trees, and feed primarily on dead or decaying plant material.

The humped tree snail occurs in cool, shaded forest habitat as observed by Crampton and others (Crampton 1925, pp. 31, 61; Cowie 1992, pp. 175–176) with high humidity and reduced air movement that prevents excessive water loss. Crampton (1925, pp. 31, 61) described the habitat requirements of the partulid trees snails as having ''sufficiently high and dense growth to provide shade, to conserve moisture, and to effect the production of a rich humus. Hence the limits to the areas occupied by Partulae are set by the more

ultimate ecological conditions which determine the distribution of suitable vegetation.'' Crampton further notes that the Mariana Islands partulid tree snails live on subcanopy vegetation and are not found in high canopy. There are no known natural predators of these snails, although many of these partulid species are currently preyed on by alien invertebrates such as flatworms and slugs (Cowie 1992, p. 175).

Following is a brief historical overview of the humped tree snail in the Mariana archipelago. Crampton (1925, pp. 8, 25, 60) first observed the humped tree snail on Guam, in at least 39 sites, totaling more than 3,000 individuals. In 1989, Hopper and Smith (1992, p. 81) resurveyed 34 of Crampton's 39 sites and did not locate any live individuals; however, they discovered individuals at a new site not noted by Crampton. Populations on Guam have since declined from hundreds to fewer than 50 individuals (Smith et al. 2009, p. 11). Bauman surveyed Rota and reported finding live humped tree snails at 5 out of 25 former sites (Bauman 1996, pp. 15, 18). The largest of these populations may have totaled as many as 1,000 snails. However, this population was located along the main road of Rota and was subsequently cleared for development (Miller 2007, pers. comm.). Four other populations on Rota in 2007 were small and totaled fewer than 600 individuals.

The humped tree snail was discovered on Aguiguan in 1952, in six colonies (biologists often refer to snail populations as ''colonies'') (Kondo 1970, pp. 75, 81). In 1992, two separate surveys reported snails were observed at four locations on Aguiguan (Craig and Chandran 1992; Smith 1995), but by 2008, no live snails were found on this island (Smith 2013, p. 14). Crampton (1925) was unable to visit Tinian, although he states that Partulae were known from that island (1925, p. 6). Smith reported finding only very old shells on two surveys (2006 and 2008) of Tinian (Smith 2013, p. 6). On Saipan, Crampton collected almost 7,000 humped tree snails in 1925 (Crampton 1925, p. 62). By 1991, Smith and Hopper (1994, p. 11) could not find any live snails at 12 sites visited on the island; however, 2 small populations were later discovered, one in 2002, in the central forest area, and another in a mangrove wetland in 2010 (Bourquin 2002, in litt.; Hadfield 2010, pp. 20–21).

In 1994, Kurozumi reported approximately 20 individuals from Anatahan; however, these were possibly extirpated due to violently destructive volcanic eruptions between 2003 and 2005 (Kessler 2011). Kurozumi also reported the humped tree snails from Sarigan in 1994, and the population appears to be increasing as a result of the removal of ungulates. A survey of Sarigan in 2006 found the healthiest population in native forest at an elevation of approximately 1,300 ft (400 m) (Smith 2006 in Martin et al. 2008, p. 8–1). The species was first reported on Alamagan by Kondo in 1949, with over 50 individuals collected from wet forest (Easley 1970, p. 87). The populations seem to have declined on Alamagan by over 70 percent for individuals and approximately 27 percent for populations since that time (Kurozumi 1994). The humped tree snail was first reported from Pagan by Kondo in 1949 (Easley 1970, p. 87). Populations persist on Pagan although the same decline is seen here as for Alamagan (Kurozumi 1994).

In summary, populations of the humped tree snail are rapidly decreasing from initial numbers observed, and with continued habitat loss and predation by nonnative species, are at risk, with the possible exception of those on Sarigan, as ungulates have been removed from that island (see ''Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range,'' below). However, predation by rats remains a threat to the humped tree snail on Sarigan (Kessler 2011, p. 320).

Recent data also suggest that the individuals identified as humped tree snails on Rota may be a different species (Hadfield 2010, pp. 20–21). Because these recent findings have not been published, and data on population numbers and number of individuals has not been determined, we are still treating the humped tree snail as a single species.

Langford's Tree Snail

Langford's tree snail (*Partula langfordi;* akaleha), in the Partulidae family, is endemic to the forest ecosystem of the island of Aguiguan. Langford's tree snail was first collected and described by Kondo while working on biological control agents in the early 1950s (Kondo 1970, 18 pp.). Kondo's taxonomic work is the most recent and accepted taxonomy for this species. This tree snail has not been observed in the wild since 1992, when one live individual was observed on the northwest terrace of the island (Berger et al. 2005, p. 154). Surveys conducted in 2006 and 2008 revealed only old shells of dead *P. langfordi* (Smith 2013, p. 14).

Langford's tree snail has a dextral (to the right or clockwise from the opening of the shell at the lower right, as opposed to sinistral, to the left, or counterclockwise) shell, described by Kondo (1970, pp. 75–77) as being ovate-conic and moderately thin. The holotype of this species has a length of 0.6 in (14 mm), a diameter of 0.4 in (9 mm), and an aperture length of 0.3 in (8 mm). It has a spire of five whorls that are slightly convex, with an obtuse apex. Its aperture is oblong-ovate with the white mouth projections thickened and expanded. It is buff colored superimposed by maroon.

Although much less studied than related partulid snails from the Mariana Islands, the biology of Langford's tree snail is believed to be the same. See ''Humped tree snail (*Partula gibba*),'' above, for details.

Historically, Langford's tree snail is known only from the island of Aguiguan. In the 1970 survey of Aguiguan, it was noted that Langford's tree snail was collected from an area where it occurred sympatrically with the humped tree snail (Easely 1970, p. 89). The mixed populations were not uniformly distributed, but occurred in small colonies with large unoccupied areas between the colonies. In five of the sites, the Langford's tree snail outnumbered the humped tree snail and it appeared that humped tree snails were more numerous and dominant in the western portion of the site while Langford's tree snails were dominant in the eastern portion of the site (Kondo 1970, p. 81). Three other colonies of Langford's tree snail were collected, two on the north coast and one on the west end of Aguiguan (Kondo 1970, p. 81). A total of 464 adults were collected from 7 sites (Kondo 1970, p. 81). In 1985, five adult Langford's tree snails were collected from the west end of the island (Smith 1995). The last survey in which the species was detected in the wild was conducted in 1992, and one live snail was observed on the northwest terrace of the island (Smith 1995). Surveys of Aguiguan in 2006 and 2008 failed to locate any live Langford's tree snails (Smith 2013, p. 14).

In 1993, the University of Nottingham in England had six young and four adult Langford's tree snails in captivity. By 1994, two adult snails remained. Unfortunately, at the end of 1994, the last two Langford's tree snails died (Pearce-Kelly et al. 1995).

The 2005 Comprehensive Wildlife Conservation Strategy for CNMI (Division of Fish and Wildlife) (Berger et al. 2005) states that ''all Partulid snails are selected as a species of special conservation need'' (p. 153), and that ''[Crampton] found as many as 31 snails on the underside of a single leaf of caladium'' (p. 155) (demonstrating that it would be easy to miss a large number

of snails if that one particular leaf were missed during a survey). This strategy outlines conservation actions for Langford's tree snail, including more numerous and intensive surveys, removal of goats from Aguiguan island, control of nonnative species, and reforestation with native plants (pp. 158–159). Given that so few surveys have been conducted on Aguiguan, and only previously surveyed sites were ever revisited, it is likely Langford's tree snail may be found.

Guam Tree Snail

The Guam tree snail (*Partula radiolata;* akaleha), in the Partulidae family, is endemic to the forest ecosystem of Guam. The Guam tree snail was first collected by Quoy and Gaimard during the French *Astrolabe* expedition of 1828 and was initially named *Bulimus* (*Partula*) *radiolatus* by Pfeiffer in 1846, which he changed to *Partula radiolata* in 1849 (Crampton 1925, p. 34). Crampton's 1925 taxonomic work is the most recent and accepted taxonomy for this species.

The shell of the Guam tree snail is pale straw-colored with darker streaks and brown lines, and has impressed spiral lines. Adult length is 0.5 to 0.7 in (13 to 18.5 mm), and width is 0.3 to 0.5 in (8 to 12 mm), with five slightly convex whorls (Pilsbry 1909–1910 in Crampton 1925, p. 35; Smith et al. 2008 in Kerr 2013, p. 10). The biology of the Guam tree snail is very similar to that of the humped tree snail (see ''Humped tree snail (*Partula gibba*),'' above, for further description). The Guam tree snail prefers the same cool, shaded forest habitat as the humped tree snail and Langford's tree snail, described above.

Historically, suitable habitat for the Guam tree snail was widely available prior to World War II, and included strand vegetation, forested river borders, and lowland and highland forests (Crampton 1925, pp. 36–37), and Crampton found ''it occurs almost everywhere on the island where suitable vegetation exists,'' although historical population numbers are unknown. Crampton (1925, pp. 38–40) found the Guam tree snail at 37 of 39 sites surveyed on Guam and collected a total of 2,278 individuals. The actual population sizes were probably considerably larger since the purpose of Crampton's collections was to evaluate geographic differences in shell patterns and not to assess population size. In 1989, Hopper and Smith (1992, p. 78) resurveyed 34 of Crampton's 39 sites on Guam and an additional 13 new sites. They observed that 9 of the original 34 sites resurveyed supported these snails; however, the Crampton site identified as having the largest remaining population of the Guam tree snail (estimated at greater than 500 snails) had been completely eliminated by the combined effects of land clearing for a residential development and a subsequent series of typhoons in 1990, 1991, and 1992 (Smith 1995).

Of the 13 new sites surveyed by Hopper and Smith in 1989, 7 supported populations of the Guam tree snail. One of these populations was eliminated by wildfires that burned into ravine forest occupied by the snails in 1991 and 1992 (Smith and Hopper 1994). Further surveys by Smith (1995) revealed five new populations of the Guam tree snail. According to Smith, by 1995, there were 20 sites that still supported small populations of the Guam tree snail. Snails were moved from 1 of these 20 sites to a new location due to the development of a golf course (Smith 1995). In 2003 an additional small colony (fewer than 100 snails) was found on the U.S. Naval Base (Smith 2006, pers. comm.). A smaller colony (20 to 25 snails) was found in 2004 along the Lonfit River (Smith 2006, pers. comm.). Additionally, surveys on the Guam Naval Magazine located another new population, with shells of tree snails in abundance on the ground at all locations (Miller 2006, pers. comm.; JGPO–NavFac 2014 apps, pp. 27, 59). Further surveys of lands leased by the Navy in 2009 indicated a decline in densities of tree snails by about half, which was attributed to a loss of native understory (Smith et al. 2009, pp. 13–14). In 2011, a survey of Andersen AFB revealed a single colony of Guam tree snail (Joint Region Marianas (JRM) Integrated Natural Resources Management Plan (INRMP) Appendices 2012, p. 15).

Populations of the Guam tree snail continue to decline, from first observations of thousands of individuals by Crampton, down to 20 colonies or fewer today. Continued loss of habitat due to development and removal of native plants by ungulates contributes to this loss.

Fragile Tree Snail

The fragile tree snail (*Samoana fragilis;* akaleha), in the Partulidae family, is known from the forest ecosystems of Guam and Rota. This species was first described as *Partula fragilis* by Férussac in 1821 (Crampton 1925, p. 30). It is the only species representing the genus of *Samoana* in the Mariana Islands. The fragile tree snail was first collected on Guam in 1819 by Quoy and Gaimard during the Freycinet Uranie expedition of 1817 to 1819 (Crampton 1925, p. 30). Crampton's 1925 taxonomic work for this species is the most recent and accepted taxonomy for this species.

The conical shell of the fragile tree snail is 0.5 to 0.6 in (12 to 16 mm) long, 0.4 to 0.5 in (10 to 12 mm) wide, and is formed by four whorls that spiral to the right. The common name is derived from the thin, semi-transparent nature of the shell. The shell has delicate spiral striations intersected by transverse growth striations. The background color is buff, tinted by narrow darker marks and whitish banding that are derived from the internal organs of the animal that are visible through the shell (Mollendorff 1894 in Crampton 1925, p. 31). The biology and habitat for this partulid tree snail are the same as those described for the three partulid species described above (see the ''Humped tree snail (*Partula gibba*),'' above).

Historically, the fragile tree snail was known from 13 populations on Guam and 1 population on Rota (Crampton 1925, p. 30; Kondo 1970, pp. 86–87). Easely (1970, p. 86) documented the 1959 discovery of the fragile tree snail on Rota by R.P. Owen. The same area had been surveyed just 7 years earlier by Benavente and Kondo, in 1952, but the fragile tree snail was not observed (Easley 1970, p. 87). In 1989, Hopper and Smith (1992, p. 78) resurveyed Crampton's original sites plus 13 more, all on Guam. At that time, they found fragile tree snails at only six sites. The most recent surveys on Guam for the fragile tree snail were conducted in 2008 and 2011. Currently, two colonies are known on Guam (Smith et al., 2009, pp. 7, 13). The original site where this species was found on Rota was converted to agricultural fields and no living snails were found there in 1995; however, in 1996, a new colony was found on Rota in a different location (Bauman 1996, pp. 18, 21).

We lack quantitative estimates for the fragile tree snail (Bauman 1996, p. 21), but Crampton (1925, p. 30) originally described this species as rare and low in numbers. Available data indicates the number of known colonies has declined between 1925 and present, from approximately 14 colonies to only 3 colonies.

In summary, populations of the fragile tree snail are decreasing from initial numbers observed on Guam and Rota, and are at risk, due to continued habitat loss and destruction from agriculture, urban development, nonnative animals and plants, and typhoons. Trade of shells by collectors, combined with direct predation by rats and flatworms, also contribute to the decline of the fragile tree snail. Low numbers of

individuals contribute to population declines through loss of vigor and genetic representation.

Summary of Biological Status and Threats Affecting the 23 Species Proposed for Listing as Endangered or Threatened Species

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as an endangered or threatened species as these terms are defined in the Act. However, the identification of factors that could impact a species negatively may not be sufficient to warrant listing the species under the Act. The information must include evidence sufficient to show that these factors are operative threats that act on the species to the point that the species meets the definition of endangered or threatened under the Act.

If we determine that the level of threat posed to a species by one or more of the five listing factors is such that the species meets the definition of either endangered or threatened under section 3 of the Act, that species may then be proposed for listing as an endangered or threatened species. The Act defines an endangered species as ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The threats to each of the individual 23 species proposed for listing in this document are summarized in Table 3, and discussed in detail below. Since there are 15 islands in the Mariana Islands, Table 4 (below) is provided as a supplement to Table 3, to allow the reader to better understand the presence of nonnative species addressed in this proposed rule that negatively impact the 23 species on an island-by-island basis.

TABLE 3—SUMMARY OF PRIMARY THREATS IDENTIFIED FOR EACH OF THE 23 MARIANA ISLANDS SPECIES

Species	Eco-system	Factor A						Factor B	Factor C			Factor D	Factor E
		Develop-ment, mili-tary training, urbanization	Non-native animals	Non-native plants	Fire	Ty-phoons	Climate change	Over-utilization	Predation and herbivory by ungulates	Predation and herbivory by NN verte-brates	Predation and herbivory by NN inverte-brates	Inadequate existing regulatory mechanisms	Species-specific
PLANTS													
Bulbophyllum guamense	FR	X	R, BTS	X	X	X	X	.....	.....	.....	S	X	.....
Cycas micronesica	FR	X	R, P, B, D, BTS	X	X	X	X	.....	P, D	.....	CAS	X	ORD
Dendrobium guamense	FR	X	R, BTS	X	X	X	X	.....	.....	.....	S	X	.....
Eugenia bryanii	FR	X	R, D, BTS	X	.....	X	X	.....	D	.....	.....	X	.....
Hedyotis megalantha	SV	X	R, P, BTS	X	X	X	X	.....	.....	.....	.....	X	REC
Heritiera longipetiolata	FR	X	R, P, B, D, C, BTS	X	.....	X	X	.....	P, D	.....	.....	X	ORD
Maesa walkeri	FR	X	R, P, B, D, BTS	X	X	X	X	.....	.....	.....	.....	X	LN
Nervilia jacksoniae	FR	X	P, B, D, R, BTS	X	X	X	X	.....	.....	.....	S	X	.....
Phyllanthus saffordii	SV	X	R, P, BTS	X	X	X	X	.....	.....	.....	.....	X	REC
Psychotria malaspinae	FR	X	R, P, B, D, BTS	X	.....	X	X	.....	P, D	.....	.....	X	LN
Solanum guamense	FR	X	R, P, D, BTS	X	.....	X	X	.....	P, D	.....	.....	X	LN
Tabernae-montana rotensis	FR	X	R, P, B, D, BTS	X	X	X	X	.....	.....	.....	.....	X	V
Tinospora homosepala	FR	.....	R, BTS	X	.....	X	X	.....	.....	.....	.....	X	LN
Tuberolabium guamense	FR	X	R, BTS	X	X	X	X	.....	.....	.....	S	X	LN
ANIMALS													
Pacific sheath-tailed bat (*Emballonura semicaudata rotensis*)	FR, CA	X	R, G	.....	.....	X	X	.....	.....	R, BTS, ML	.....	X	.....
Slevin's skink (*Emoia slevini*)	FR	X	R, G, P, C	.....	.....	X	X	.....	.....	R, BTS, ML	.....	X	.....
Mariana eight spot butterfly (*Hypolimnas octocula mariannensis*)	FR	X	R, P, B, D, BTS	X	.....	X	X	.....	.....	.....	A, W	X	.....
Mariana wandering butterfly (*Vagrans egistina*)	FR	.....	R	.....	.....	X	X	.....	.....	.....	A, W	X	.....
Rota blue damselfly (*Ischnura luta*)	ST	X	.....	X	.....	X	X	.....	.....	.....	.....	X	LN, WE
Humped tree snail (*Partula gibba*)	FR	X	R, G, P, B, C, D, BTS	X	X	X	X	X	.....	R	F	X	.....
Langford's tree snail (*Partula langfordi*)	FR	X	R, G	X	.....	X	X	X	.....	R	F	X	LN
Guam tree snail (*Partula radiolata*)	FR	X	R, P, B, D, BTS	X	X	X	X	X	.....	.....	F	X	LN
Fragile tree snail (*Samoana fragilis*)	FR	X	R, P, B, D, BTS	X	.....	X	X	X	.....	R	F	X	LN

Factor A = Habitat modification; Factor B = Overutilization; Factor C = Disease or predation; Factor D = Inadequacy of regulatory mechanisms; Factor E = Other Species-specific threats; FR = Forest; SV = Savanna; ST = Stream; CA = Cave; R = Rats; P = Pigs; B = Water buffalo; D = Deer; C = Cattle; G = Goats; S = Slugs; CAS = Scale; ML = Monitor lizard; A = Ants; W = Parasitic wasps; F = Manokwar flatworm; BTS = Brown tree snake; REC = Recreational vehicles; ORD = Ordinance; LN = Limited numbers; WE = Water extraction; V = Vandalism.

TABLE 4—NONNATIVE ANIMAL SPECIES THAT NEGATIVELY IMPACT THE 23 MARIANA ISLANDS SPECIES OR THEIR HABITAT, BY ISLAND

Island	Pigs	Goats	Cattle	Water Buffalo	Deer	Rats	Monitor Lizard	Brown Tree Snake	Insects and Worms	Species Proposed for Listing that are Subject to Threats Posed by One or More Nonnative Animal Species on These Islands (see Table 3, above)	
										Plants	Animals
Guam	X			X	X	X	*X	X	A, W, F, S, CAS.	*Bulbophyllum guamense*, *Cycas micronesica*, *Dendrobium guamense*, *Eugenia bryanii*, *Hedyotis megalantha*, *Heritiera longipetiolata*, *Maesa walkeri*, *Nervilia jacksoniae*, *Phyllanthus saffordii*, *Psychotria malaspinae*, *Solanum guamense*, *Tabernaemontana rotensis*, *Tinospora homosepala*, *Tuberolabium guamense*.	Slevin's skink (on Cocos Island), Mariana eight-spot butterfly, Mariana wandering butterfly, Guam tree snail, Humped tree snail.
Rota					X	X	*X		A, W, F, S, CAS.	*Bulbophyllum guamense*, *Cycas micronesica*, *Dendrobium guamense*, *Maesa walkeri*, *Nervilia jacksoniae*, *Tabernaemontana rotensis*, *Tuberolabium guamense*.	Mariana wandering butterfly, Rota blue damselfly, Humped tree snail, Fragile tree snail.
Aguiguan		X				X	*X		F		Pacific sheath-tailed bat, Humped tree snail, Langford's tree snail.
Tinian			X			X	*X		F	*Heritiera longipetiolata*.	
Saipan						X	*X	**X	A, W, F, S	*Dendrobium guamense*, *Heritiera longipetiolata*.	Mariana eight-spot butterfly, Humped tree snail.
Farallon de Medinilla.						X					
Anatahan						X	*X				Humped tree snail.
Sarigan						X	*X		F		Slevin's skink, Humped tree snail.
Guguan						X			F		Slevin's skink.
Alamagan	X	X	X			X	*X		F		Slevin's skink, Humped tree snail.
Pagan	X	X	X			X	*X		F		Slevin's skink, Humped tree snail.
Agrihan	X	X				X	*X				
Asuncion						X					Slevin's skink.
Maug						X					
Uracas						X					

A = Ants
W = Parasitic wasp
F = Manokwar flatworm
S = Slugs
CAS = Scale
* Animals only
** Confirmed sightings of BTS have occurred on Saipan; however no established populations have been documented.

Methodology

Scientific research directed toward each of the species proposed for listing is limited because of their rarity and the challenging logistics associated with conducting field work in the Mariana Islands (i.e., areas are typically remote, difficult to access and work in, and expensive to survey in a comprehensive manner). However, there is information available on many of the threats that act on Mariana Island ecosystems, and, for some ecosystems, these threats are well studied and understood. Each of the native species that occur in the Mariana Islands ecosystems suffers from exposure to these threats to differing degrees, because each species that depends upon a shared ecosystem requires many of the same physical and biological features and the successful functioning of their specific ecosystem to survive. Therefore, for the purposes of this proposed rule, our assumption is that the threats that act at the ecosystem level also act on each of the species that depend upon those ecosystems. In addition, in some cases we have identified species-specific threats—threats that affect a particular species or subset of species within a shared ecosystem—such as predation of tree snails by nonnative invertebrates. The species discussed in this proposed rule, which are dependent on the native ecosystems that are affected by these threats, have in turn shown declines in either number of individuals, number of occurrences, or changes in species abundance and species composition. These declines can reasonably be attributed directly or indirectly to the threats discussed below (by indirectly, we mean that where there are threats to the ecosystem that negatively affect the ecosystem, the species in that ecosystem that depend upon it for survival are negatively affected as well).

The following constitutes a list of ecosystem-scale threats that affect the species proposed for listing in the four described ecosystems on the Mariana Islands:

(1) Foraging and trampling of native plants by feral pigs (*Sus scrofa*), goats (*Capra hircus*), cattle (*Bos taurus*), water buffalo (*Bubalus bubalis*), and Philippine deer (*Cervus mariannus*), which can result in severe erosion of watersheds (Cuddihy and Stone 1990, p. 63; Berger et al. 2005, pp. 42, 44, 138, 156–157; CNMI–SWARS 2010, pp. 9–10; Kessler 2011, pp. 320–324). Foraging and trampling events destabilize soils that support native plant communities, bury or damage native plants, and have adverse effects on water quality due to runoff over exposed soils (Cuddihy and Stone 1990, p. 63; Berger et al. 2005, pp. 42, 44, 138, 156–157; CNMI–SWARS 2010, pp. 9–10; Kessler 2011, p. 323).

(2) Ungulate destruction of seeds and seedlings of native plant species through foraging and trampling facilitates the conversion of disturbed areas from native to nonnative vegetative communities (Cuddihy and Stone 1990, p. 65).

(3) Disturbance of soils by feral pigs from rooting can create fertile seedbeds for alien plants, some of them spread by ingestion and excretion by pigs (Cuddihy and Stone 1990, p. 65; Kessler 2011, pp. 320, 323).

(4) Increased nutrient availability as a result of pigs rooting in nitrogen-poor soils, which facilitates establishment of alien weeds. Introduced vertebrates are known to enhance the germination of alien plants through seed scarification in digestive tracts or through rooting and fertilization with feces of potential seedbeds (Stone 1985, p. 253). In addition, alien weeds are more adapted to nutrient-rich soils than native plants (Cuddihy and Stone 1990, p. 65), and rooting activity creates open areas in forests, allowing alien species to completely replace native stands.

(5) Rodent damage to plant propagules, seedlings, or native trees, which changes forest composition and structure (Cuddihy and Stone 1990, p. 67).

(6) Feeding or defoliation of native plants by nonnative insects, which can reduce geographic ranges of some species, because the damage caused by these insects weakens the plants, making them more susceptible to disease or other predators and herbivores (Cuddihy and Stone 1990, p. 71).

(7) Nonnative insect predation on native insects, which affects native plant species by preventing pollination and seed set and dispersal, and can directly kill native insects (Cuddihy and Stone 1990, p. 71).

(8) Nonnative animal (rat, snakes, and monitor lizard) predation on native birds, tree snails, bats, and skinks, causes island extirpations or extinctions, in addition to altering seed dispersal of native plants (Cuddihy and Stone 1990, pp. 72–73).

Each of the above threats is discussed in more detail below, and summarized above in Table 3. The most-often cited effects of nonnative plants on native plant species are competition and displacement. Competition may be for water, light, or nutrients, or it may involve allelopathy (chemical inhibition of growth of other plants). Alien plants may displace native species of plants by preventing their reproduction, usually by shading and taking up available sites for seedling establishment. Alien plant invasions may also alter entire ecosystems by forming monotypic stands, changing fire characteristics of native communities, altering soil-water regimes, changing nutrient cycling, or encouraging other nonnative organisms (Smith 1989, p. 62; Vitousek et al. 1987, pp. 224–227).

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat Destruction and Modification by Development, Military Training, and Urbanization

The consequences of past land use practices, such as agricultural or urban development, have resulted in little or no native vegetation remaining throughout the inhabited islands of the Mariana archipelago, largely impacting the forest, savanna, stream, and cave ecosystems (Steadman 1990, pp. 207–215; Steadman 1995, pp. 1123–1131; Fritts and Rodda 1998, pp. 119–120; Critical Ecosystem Partnership Fund 2007, pp. i–viii, 1–127). Areas once used for agriculture by the Chamorro are now being converted into residential areas, left fallow, or are being burned by hunters to attract deer (GDAWR 2006, p. 30; Boland 2014, in litt.). Guam's projected population increase by 2040 to 230,000 is an increase of almost 70 percent from that in 2010 (World Population Review 2014, in litt.). CNMI's current population of a little over 51,000 is a decrease from that in 2010, due to collapse of the local garment industry (Eugenio 2009, in litt.). Although the final numbers are not yet known, the planned military relocation to Guam and Tinian will add a large number of Marines and their dependents to the local population, with a concurrent introduction of support staff and development of infrastructure, and increased use of resources such as water (Berger et al. 2005, p. 347; JGPO–NavFac, Pacific 2010a, p. ES–1).

The military buildup on Guam was originally valued in excess of $10 billion (2.5 times the size of the current Guam economy), and was planned to take place over 4 years (Guam Economic Development Authority 2011, p. 58). The scope of the relocation of personnel has decreased since this estimate in 2011, but will still greatly affect infrastructure and resource needs (JGPO-NavFac, Pacific 2014, p. ES 3.1). The currently preferred alternative sites on Guam for relocation of personnel and for live-fire training include Naval Computer and Telecommunications

Station Finegayan, Andersen South, Orote Point, Pati Point, Navy Barrigada, and Naval Magazine areas, where, in total, 18 of the 23 species or their habitat are known to occur (13 of the 14 plants: *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Eugenia bryanii, Hedyotis megalantha, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordi, Psychotria malaspinae, Solanum guamense, Tabernaemontana rotensis,* and *Tuberolabium guamense;* and 5 of the 9 animals: the Mariana eight-spot butterfly, the Mariana wandering butterfly, the Guam tree snail, the humped tree snail, and the fragile tree snail), and additionally includes the host plants *Procris pendunculata* and *Elatostema calcareum* for the Mariana eight-spot butterfly and the host plant *Maytenus thompsonii* for the Mariana wandering butterfly.

The inhabited island of Tinian and the uninhabited island of Pagan are planned to be used for military training with live-fire weapons and presence of military personnel. The northern two-thirds of Tinian are leased by DOD, and the development of these lands and effects from live-fire training will directly impact the trees *Heritiera longipetiolata* (on Tinian) and *Cycas micronesica* (on Pagan) and their habitat in the forest ecosystem. Pagan is currently occupied by Slevin's skink and the humped tree snail, and is historical habitat of *Bulbophyllum guamense,* all of which will be negatively impacted by direct destruction by live-fire weapons or possible wildfires caused by them and by trampling and destruction by military personnel.

Rota's land is under transition from public to private ownership, and the flat or lower-sloped areas comprising 66 percent of the island is expected to be privately owned (National Park Service 2005 in National Oceanic and Atmospheric Administration (NOAA) 2012, p. 273). Rota already has 7 hotels, and tourism is the island's principal economic industry. If Rota's large central forested areas are developed, only the remaining cliffs or steep slopes would contain undisturbed native forest (National Park Service 2005 in NOAA 2012, p. 273). Continued development on Rota will cause an increase of water use, and will impact the Talakhaya Springs and the streams fed by the springs. Specifically, dewatering of the streams on Rota could lead to elimination of the only known population of the Rota blue damselfly (see ''Water Extraction,'' below). Additionally, development around and within forested areas on Rota will also directly impact the forest habitat and individuals of *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Maesa walkeri, Nervilia jacksoniae, Tabernaemontana rotensis,* and *Tuberolabium guamense;* and the habitat and host plants of the Mariana wandering butterfly, and the humped tree snail and fragile tree snail.

Other urban development (primarily involving housing development) will further impact the ecosystems that support native species. On Guam, a housing development is proposed for the Sigua highlands, where two of the plant species proposed for listing as endangered (*Hedyotis megalantha* and *Phyllanthus saffordii*) are known to occur (Kelman 2013, in litt.). In addition, the island of Aguiguan is proposed to be developed as an ecotourism resort (Eugenio 2013, in litt.). If developed, this ecotourism resort will negatively impact the forest and cave ecosystems that support three of the animals proposed for listing as endangered (the Pacific sheath-tailed bat, the humped tree snail, and Langford's tree snail), by causing destruction of the forest ecosystem (and associated food sources for the Pacific sheath-tailed bat) for development of tourist facilities for transportation and accommodation, by associated introduction of nonnative predators and herbivores, and by causing direct disturbance by visitation of caves.

The total land area for all of the northern islands (within these species' current and historical range) is only 62 mi^2 (160 km^2), and 44 mi^2 (114 km^2) of this land area is on islands with volcanic activity, which could impact the species and their habitat. The larger land area on the southern islands (332 mi^2 (857 km^2)), within these species' current and historical range, is undergoing increased human use, as described above.

In summary, development, military training, urbanization (GDAWR 2006, p. 69), and the associated destruction or degradation of habitat through loss of forest and savanna areas, disturbance of caves, and dewatering of streams, are serious threats to 13 of the 14 plants (*Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Eugenia bryanii, Hedyotis megalantha, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Psychotria malaspinae, Solanum guamense, Tabernaemontana rotensis,* and *Tuberolabium guamense*), and to 8 of the 9 animals (the Pacific sheath-tailed bat, Slevin's skink, the Mariana eight-spot butterfly, the Rota blue damselfly, the Guam tree snail, the humped tree snail, Langford's tree snail, and the fragile tree snail) that are dependent on these ecosystems. We do not have sufficient information specific to 2 of the 23 species, *Tinospora homosepala* and the Mariana wandering butterfly, that would lead us to conclude that habitat loss as a result of development, military training, or urbanization is a threat to these species. For a more thorough discussion of previous occupations and current U.S. military activities, see ''Historical and Ongoing Human Impact,'' above.

Habitat Destruction and Modification by Nonnative Animals

Animal species introduced by humans, either intentionally or accidentally, are responsible for some of the greatest negative impacts to the four Mariana Islands ecosystems described here (Stone 1970, pp. 14, 32; Intoh 1986 in Conry 1988, p. 26; Fritts and Rodda 1998, p. 130). Although there are numerous reports of myriad introduced animal species that have negatively impacted the four described Mariana Islands ecosystems, ranging from ungulates to insects (including such diverse animals as the musk shrew (*Suncus murinus*), dogs (*Canis lupis familiaris*), cats, and black drongoes (birds; *Dicrurus macroercus*)), we have focused our efforts here on the negative impacts of those species that impose the greatest harmful effects on the four ecosystems (see Table 3). In addition, we address the compounding effects on these ecosystems that arise when the pressure of two or more individual negative impacts is greater than the sum of their parts (i.e., synergistic effects). Below we discuss the negative impacts of various nonnative animals, including feral pigs, goats, cattle, and water buffalo, as well as Philippine deer, rats, and the brown tree snake (BTS) (*Boiga irregularis*), which impose the greatest adverse impacts on one or more of the 4 described Mariana Islands ecosystems (forest, savanna, stream, and cave) that support the 23 species proposed for listing here (Stone 1970, pp. 14, 32; Intoh 1986 in Conry 1988, p. 26; Fritts and Rodda 1998, pp. 130–133; Berger et al. 2005, pp. 42, 44, 138, 156–157; CNMI–SWARS 2010, pp. 7, 24). Because most of the islands in the Mariana archipelago are small (Guam being the largest), the negative impacts associated with a destructive nonnative animal species affect the entire island. The mild climate of the islands, combined with the lack of competitors or predators, has led to the successful establishment of large populations of these introduced animals, to the detriment of the native Mariana Island species and ecosystems.

These effects are discussed in more detail, below.

Habitat Destruction and Modification by Introduced Ungulates

Like most oceanic islands, the Mariana Islands, and greater Micronesia, did not support indigenous populations of terrestrial mammalian herbivores prior to human colonization (Wiles et al. 1999, p. 194). Although agriculture and land use by the Chamorro clearly altered the landscape and composition of native biota in the Mariana Islands, starting over 3,500 years ago (Perry and Morton 1999, p. 126; Steadman 1995, pp. 1,126–1,127), impacts to the native species and ecosystems of the Marianas accelerated following the arrival of Magellan in the 1500s (Pregill 1998, p. 66; Perry and Morton 1999, pp. 126–127). The Spanish and subsequent explorers intentionally introduced pigs, cattle, goats, water buffalo, and Philippine deer to serve as food sources (Fosberg 1960, p. 54; Conry 1988, pp. 26–28). The isolation of the Mariana Islands allowed plant species to evolve without defenses to browsing and grazing animals, such as secondary metabolites and spines, making them highly susceptible to herbivory (Bowen and Van Vuren 1997, p. 1,249; Wiles et al. 1999, p. 194). Introduced mammals have profoundly influenced many insular ecosystems around the globe through alteration of the physical environment, culminating in the decline and loss of native biota (Stone 1970, pp. 14, 32; Scowcroft and Giffin 1983 in Wiles et al. 1999, p. 194; Stone 1985, pp. 251, 253–263; Campbell and Donlan 2004, pp. 1,363, 1,365), including the Mariana Islands ecosystems (Conry 1988, pp. 27–28; Mueller-Dombois and Fosberg 1998, pp. 250–252, 264; Berger et al. 2005, pp. 42, 44, 138, 156–157; CNMI–SWARS 2010, pp. 7, 24).

The presence of alien mammals is considered one of the primary factors underlying the alteration and degradation of native plant communities and habitats on the Mariana Islands. The destruction or degradation of habitat due to nonnative ungulates, including pigs, goats, cattle, water buffalo, and deer, is currently a threat to 17 of the proposed species in 2 of the 4 ecosystems (forest and savanna) on 7 of the 15 Mariana Islands (Guam, Rota, Aguiguan, Tinian, Alamagan, Pagan, and Agrihan). Habitat degradation or destruction by ungulates is a threat to 10 of the 14 plant species (*Cycas micronesica, Eugenia bryanii, Hedyotis megalantha, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Psychotria malaspinae, Solanum guamense,* and *Tabernaemontana rotensis*), and 7 of the 9 animal species (the Pacific sheath-tailed bat, Slevin's skink, the Mariana eight-spot butterfly, the Guam tree snail, the humped tree snail, Langford's tree snail, and the fragile tree snail) proposed for listing (Table 3) (Stone 1970, pp. 14, 32; Perlman and Wood 1994, pp. 135–136.; Fritts and Rodda 1998, pp. 130–133; Mueller-Dombois and Fosberg 1998, p. 250; Perry and Morton 1999, pp. 126–127; Wiles and Johnson 2004, p. 586; Vogt and Williams 2004, pp. 82–89; Berger et al. 2005, pp. 42, 44, 138, 156–157; CNMI–SWARS 2010, pp. 7, 24; Pratt 2011, pp. 2, 36; Cook 2012, in litt.; Rogers 2012, in litt.; Rubinoff and Haines 2012, in litt.; Gawel 2014, in litt.; Marler 2014, in litt.). The three epiphytic orchids (*Bulbophyllum guamense, Dendrobium guamense,* and *Tuberolabium guamense*), the vine *Tinospora homosepala,* the Mariana wandering butterfly and its host plant *Maytenus thompsonii,* and the Rota blue damselfly are not reported to be vulnerable to habitat modification and destruction caused by nonnative ungulates.

Pigs—The destruction or degradation of habitat due to nonnative feral pigs is currently a threat in 2 (forest and savanna) of the 4 Mariana Islands ecosystems and their associated species on 4 of the 15 islands (Guam, Alamagan, Pagan, and Agrihan) (Berger et al. 2005, pp. 37–38, 40–44, 51, 95, 114; CNMI–SWARS 2010, p. 15; Kessler 2011, pp. 320, 323; Pratt 2011, pp. 2, 36). Pigs are present on other islands in the archipelago not noted above (i.e., Rota, Saipan, and Tinian); however, they are present in very low numbers, primarily on farms and, therefore, not considered a threat on these islands at this time.

Feral pigs are known to cause deleterious impacts to ecosystem processes and functions throughout their worldwide distribution (Aplet et al. 1991, p. 56; Anderson and Stone 1993, p. 201; Campbell and Long 2009, p. 2,319). Feral pigs are extremely destructive and have both direct and indirect impacts on native plant communities. While rooting in the earth in search of invertebrates and plant material, pigs directly impact native plants by disturbing and destroying vegetative cover, and trampling plants and seedlings. It has been estimated that at a conservative rooting rate of 2 square yards (yd^2) (1.7 m^2) per minute, with only 4 hours of foraging a day, a single pig could disturb over 1,600 yd^2 (1,340 m^2) (or approximately 0.3 ac, or 0.1 ha) of groundcover per week (Anderson et al. 2007, in litt.).

Pigs may also reduce or eliminate plant regeneration by damaging or eating seeds and seedlings (further discussion of predation by nonnative ungulates is provided under *Factor C. Disease and Predation,* below). Pigs are a major vector for the establishment and spread of competing invasive, nonnative plant species by dispersing plant seeds on their hooves and fur, and in their feces (Diong 1982, pp. 169–170, 196–197), which also serves to fertilize disturbed soil (Siemann et al. 2009, p. 547). In addition, pig rooting and wallowing contributes to erosion by clearing vegetation and creating large areas of disturbed soil, especially on slopes (Smith 1985, pp. 190, 192, 196, 200, 204, 230–231; Stone 1985, pp. 254–255, 262–264; Tomich 1986, pp. 120–126; Cuddihy and Stone 1990, pp. 64–65; Aplet et al. 1991, p. 56; Loope et al. 1991, pp. 18–19; Gagne and Cuddihy 1999, p. 52; Nogueira-Filho et al. 2009, p. 3,681; CNMI–SWARS 2010, p. 15; Dunkell et al. 2011, pp. 175–177; Kessler 2011, pp. 320, 323). Erosion, resulting from rooting and trampling by pigs, impacts native plant communities by contributing to watershed degradation and alteration of plant nutrient status, as well as causing direct damage to individual plants from landslides (Berger et al. 2005, pp. 42–44; Vitousek et al. 2009, pp. 3074–3086; Chan-Halbrendt et al. 2010, p. 251; Kessler 2011, pp. 320–324).

In the Hawaiian Islands, pigs have been described as the most pervasive and disruptive nonnative influence on the unique native forests, and are widely recognized as one of the greatest current threats to Hawaii's forest ecosystems (Aplet et al. 1991, p. 56; Anderson and Stone 1993, p. 195). The negative impacts from pig rooting and wallowing described above negatively affect 2 of the 4 described ecosystems (forest and savanna), and 14 of the 23 species proposed for listing as endangered or threatened (9 plants: *Cycas micronesica, Hedyotis megalantha, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Psychotria malaspinae, Solanum guamense,* and *Tabernaemontana rotensis;* and 5 animals: Slevin's skink, the Mariana eight-spot butterfly, and the Guam tree snail, the humped tree snail, and the fragile tree snail) (Conry 1988, pp. 27–28; Vogt and Williams 2004, p. 88; Berger et al. 2005, pp. 37–38, 40–44, 51, 95, 114; CNMI–SWARS 2010, p. 15; SWCA 2010, p. 38; Kessler 2011, pp. 320, 323; Pratt 2011, pp. 2, 36; Harrington et al. 2012, in litt.).

Goats—Habitat destruction or degradation of habitat due to nonnative feral goats is currently a threat to three of the species proposed for listing in

two (forest and cave) of the four Mariana Islands ecosystems, on the islands of Aguiguan, Alamagan, Pagan, and Agrihan (Berger et al. 2005, pp. 36, 38, 40, 42–47; CNMI–SWARS 2010, p. 15; Kessler 2011, pp. 320–323; Pratt 2011, pp. 2, 36). Goats are presumably present on other islands (e.g., Guam and Saipan, and possibly Rota), but these individuals are primarily on farms and, therefore, are not considered a threat at this time (Kremer 2013, in litt.). Three of the 23 species proposed for listing as endangered or threatened species in this rule (the Pacific sheath-tailed bat, the humped tree snail, and Langford's tree snail), within the forest and cave ecosystems on the above-mentioned islands, are negatively affected by feral goats.

The feral goat population on Aguiguan increased from a handful of animals in 1992 to more than 1,000 in 2002, which led to the general destruction of the forest ecosystem due to lack of regeneration of native plants and almost complete loss of understory plants, leaving only two native plants that are unpalatable, *Cynometra ramiflora* and *Guamia mariannae* (Cruz et al. 2008, p. 243; Wiles and Worthington 2002, p. 7). In addition, feral goats on Aguiguan have been observed entering caves for shelter, which disrupts the endangered Mariana swiftlet colonies and is believed to disturb the Pacific sheath-tailed bat (Cruz et al. 2008, p. 243; Wiles and Worthington 2002, p. 17). Researchers found that if caves suitable for bats were occupied by goats, there were no bats present in the caves (GDAWR 1995, p. 95). Goats are widely recognized to have almost limitless ranges, and are able to access, and forage in, extremely rugged terrain (Clarke and Cuddihy 1980, pp. C–19, C–20; Culliney 1988, p. 336; Cuddihy and Stone 1990, p. 64).

Goats have completely eliminated some plant species from islands (Mueller-Dombois and Fosberg 1998, p. 250; Atkinson and Atkinson 2000, p. 21). On Alamagan and Pagan, goat browsing negatively impacts the habitat that supports the humped tree snail in the forest ecosystem by altering the essential microclimate, leading to increased desiccation and disruption of plant decay processes (Mueller-Dombois and Fosberg 1998, p. 250). On Agrihan, goats have destroyed much of the shrubs that make up the subcanopy, and the herbs in the understory (Ohba 1994, p. 19). In addition, goats eat the seeds and seedlings of one of the dominant Micronesian (Mariana Islands and Palau) endemic canopy species, *Elaeocarpus joga,* preventing its regeneration (Ohba 1994, p. 19; Ritter and Naugle 1999, pp. 275–281). None of the 23 species addressed in this proposed rule are known to currently occur on Agrihan; however, this island may be involved in future recovery efforts for 1 or more of the 23 species, and 2 other listed species, the Mariana fruit bat and the Micronesian megapode, occur there.

Cattle—Habitat destruction or degradation of habitat by feral cattle is currently a threat to two species addressed in this proposed rule (the humped tree snail and the plant *Heritiera longipetiolata*) in the forest ecosystem on the islands of Tinian, Alamagan, and Pagan (Berger et al. 2005, pp. 114, 218; Kessler 2011, p. 320) Cattle grazing damages the native vegetation and contributes to loss of native plant species, and also alters the essential microclimate leading to increased desiccation and disruption of plant decay processes necessary to support the humped tree snail, which currently occurs on the islands of Alamagan and Pagan (Mueller-Dombois and Fosberg 1998, p. 261; Pratt 2011, pp. 2, 36; Hadfield 2010, 23 pp.; Berger et al. 2005, pp. 114, 218). Feral cattle eat native vegetation, trample roots and seedlings, cause erosion, create disturbed areas into which alien plants invade, and spread seeds of alien plants in their feces and on their bodies. The forest in areas grazed by cattle degrades to grassland pasture, and plant cover is reduced for many years following removal of cattle from an area. Feral cattle also roam Tinian and are reported to negatively affect habitat across the island by grazing, trampling plants, and exposing soil, thereby changing the microclimate and composition of vegetation. This has led to deleterious effects on 1 (*Heritiera longipetiolata*) of the 23 species proposed for listing as an endangered species in this rule and its forest habitat. The Pacific sheath-tailed bat, and the plants *Dendrobium guamense, Solanum guamense,* and *Tuberolabium guamense,* occurred historically on Tinian.

Water buffalo—Several herds of Asiatic water buffalo or carabao roam southern Guam and the Naval Magazine area, and cause damage to the forest and savanna ecosystems that support 10 of the 23 species proposed for listing as endangered or threatened species (6 plants: *Cycas micronesica, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Psychotria malaspinae,* and *Tabernaemontana rotensis;* 4 animals: the Mariana eight-spot butterfly, the Guam tree snail, the humped tree snail, and the fragile tree snail) (Conry 1988, pp. 27–28; Harrington et al. 2012, in litt.). Water buffalo create mud wallows and trample vegetation (Conry 1988, p. 27). Wallowing pools can cover as much as 0.3 ac (0.1 ha) and reach a depth of 3 ft (1.0 m) (Conry 1988, p. 27), and trampling denudes land cover, leaving erosion scars and slumping (Conry 1988, pp. 27–28). Water buffalo negatively impact the Mariana eight-spot butterfly by damaging the habitat that supports its two host plants (*Procris pendunculata* and *Elatostema calcareum*). Although four additional species (the three epiphytic orchids (*Bulbophyllum guamense, Dendrobium guamense,* and *Tuberolabium guamense*), and the Mariana wandering butterfly and its host plant *Maytenus thompsonii*) may occur on the Naval Magazine, these four species are not as vulnerable to the negative impacts associated with water buffalo.

Deer—Habitat destruction or degradation due to Philippine deer is currently a threat to 13 of the proposed species found in 2 of the 4 described Mariana Island ecosystems (forest and savanna) on the islands of Guam and Rota (Wiles et al. 1999, pp. 198–200). Philippine deer have caused extensive damage resulting in changes in the forest structure, including erosion, grazing to the point of clearing the entire herbaceous understory, consumption of seeds and seedlings preventing regeneration of native plants and the spread of invasive plant species, and other physical damage (e.g., trunk rubbing) (Schreiner 1997, pp. 179–180; Wiles et al. 1999, pp. 193–215; Berger et al. 2005, pp. 36, 45–46, 100; CNMI–SWARS 2010, p. 24; JGPO–NavFac, Pacific 2010b, pp. 3–33; SWCA 2011, pp. 35, 42; Harrington et al. 2012, in litt.). At least 34 native plant species in the forest ecosystem have been documented as known food of the deer on the islands of Guam and Rota, including: (1) genera of 5 plant species addressed in this proposed rule (*Cycas* spp. (e.g., *C. micronesica*), *Eugenia* spp. (e.g., *E. bryanii*), *Heritiera* spp. (e.g., *H. longipetiolata*), *Psychotria* spp. (e.g., *P. malaspinae*), and *Solanum* spp. (e.g, *S. guamense*); and genera of the 2 host plants *Procris* spp. and *Elatostema* spp. that support the Mariana eight-spot butterfly; (2) several keystone ecosystem species: *Artocarpus mariannensis* (dokdok, seeded bread fruit), *Discocalyx megacarpa* (otot), *Merrilliodendron megacarpum* (faniok), *Piper* spp., *Pipturus argenteus,* and *Premna obtusifolia* (false elder); and (3) the listed species *Serianthes nelsonii* (Wiles et al. 1999, pp. 198–200, 203; Rubinoff and Haines 2012, in litt.). Philippine deer degrade the habitats that support 12 of the 23 species proposed for listing

as endangered or threatened species here, in the forest and savanna ecosystems on the islands of Guam and Rota (8 plants: *Cycas micronesica, Eugenia bryanii, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Psychotria malaspinae, Solanum guamense,* and *Tabernaemontana rotensis;* and 4 animals: the Mariana eight-spot butterfly (including the two host plants *Procris pendunculata* and *Elatostema calcareum*), the Guam tree snail, the humped tree snail, the fragile tree snail).

In summary, the habitats for 17 of the 23 species within all 4 ecosystems (forest, savanna, stream, and cave) identified in this rule are exposed to ongoing destruction and modification by feral ungulates (pigs, goats, cattle, and water buffalo), and Philippine deer (10 plants: *Cycas micronesica, Eugenia bryanii, Hedyotis megalantha, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Psychotria malaspinae, Solanum guamense,* and *Tabernaemontana rotensis;* and 7 animals: the Pacific sheath-tailed bat, Slevin's skink, the Mariana eight-spot butterfly (and its 2 host plants *Procris pendunculata* and *Elatostema calcareum*), the Guam tree snail, the humped tree snail, Langford's tree snail, and the fragile tree snail). The effects of these nonnative animals include (1) the destruction of vegetative cover and the required microclimate of the 4 tree snails; (2) trampling of plants and seedlings and direct consumption of native vegetation and the 10 plants and the host plants for the 2 butterflies; (3) altering the native ecosystems that provide habitat for the 10 plants and 7 animals by soil disturbance leading to erosion and sedimentation; (4) dispersal of alien plant seeds on hooves and coats and in feces, which contributes to invasion and alteration of ecosystems required by the 10 plants and 7 animals; (5) alteration of soil nitrogen availability, and creation of open areas conducive to further invasion of native ecosystems by nonnative pest plant species; and (6) alteration of food availability for the Pacific sheath-tailed bat by destruction of native forest and the associated insect prey. All of these impacts lead to the subsequent conversion of a plant community dominated by native species to one dominated by nonnative species (see ''Habitat Destruction and Modification by Nonnative Plants,'' below). In addition, because these nonnative animals inhabit terrain that is often steep and rugged (Cuddihy and Stone 1990, pp. 64–65; Berger et al. 2005, pp. 36–38, 40–47, 51, 95, 100, 114, 218), foraging and trampling contribute to severe erosion of watersheds. Nonnative ungulates would thus pose a potential threat to the Rota blue damselfly's stream habitat, if these ungulates were allowed to roam freely on Rota (Dunkell et al. 2011, p. 192).

Habitat Destruction and Modification by Introduced Small Vertebrates

Rats—Three rat species are found in the Mariana Islands: (1) the Polynesian rat (*Rattus exulans*), the only rat found in prehistoric fossil records; (2) the Norway rat (*R. norvegicus*); and (3) a putative new southeast Asian *Rattus* line, originally thought to be *R. diardii* (synonymous with *R. tanezumi*) (Pages et al. 2010, p. 200; Pages et al. 2013, pp. 1019–1020; Kuroda 1938 in Wiewel et al. 2009, p. 208; Wiewel et al. 2009, pp. 210, 214–216). One or more of these rat species are present on all 15 Mariana Islands (Wiewel et al. 2009, pp. 205–222; Kessler 2011, p. 320). Rats are a threat to the forest and savanna ecosystems that support the 22 of the 23 species proposed for listing as endangered or threatened in this proposed rule (all 14 plant species and 8 of 9 animal species—all except the Rota blue damselfly in the stream ecosystem) by affecting regeneration of native vegetation, thereby destroying or eliminating the associated flora and fauna of these ecosystems.

Rats are recognized as one of the most destructive invasive vertebrates, causing significant ecological, as well as economic, and health impacts (Atkinson and Atkinson 2000, pp. 23–24; Cuddihy and Stone 1990, pp. 68–69). Rats impact native plants by eating fleshy fruits, seeds, flowers, stems, leaves, roots, and other plant parts (Atkinson and Atkinson 2000, p. 23), and can seriously affect plant regeneration. A New Zealand study of rats in native forests has demonstrated that, over time, differential regeneration of plants, as a consequence of rat predation, may alter the species composition of forested areas (Cuddihy and Stone 1990, p. 69). Rats have caused declines or even the complete elimination of island plant species (Campbell and Atkinson 1999, in Atkinson and Atkinson 2000, p. 24). Plants with fleshy fruits are particularly susceptible to rat predation (Stone 1985, p. 264; Cuddihy and Stone 1990, pp. 67–69).

Rats also impact the faunal composition of ecosystems by predation or competition with native amphibian, avian, invertebrate, mammalian, and reptilian species, often resulting in population declines or even extirpations; disruption of island trophic systems including nutrient cycling; and by the creation of novel vectors and reservoirs for diseases and parasites (Pickering and Norris 1996 in Wiewel et al. 2009, p. 205; Chanteau et al. 1998 in Wiewel et al. 2009, p. 205; Fukami et al. 2006, pp. 1,302–1,303; Towns et al. 2006, pp. 876–877; Wiewel et al. 2009, p. 205).

Rats are less numerous on Guam compared to Rota, Saipan, and Tinian, due to the presence of the BTS (see ''Brown Tree Snake,'' below) (Wiewel et al. 2009, p. 210). An inverse relationship has been observed between rat density and the density of the BTS, as rats are a food source for the BTS and, therefore, contribute toward its persistence (Rodda and Savidge 2007, p. 315; Wiewel et al. 2009, p. 218). Rodda et al. (1991, in CNMI DFW 2005, p. 175) suggests that rats negatively impact native reptile populations, such as Slevin's skink, by aggressively competing for habitat. Several restoration studies have shown rapid increases in skink populations after removal of rats (Towns et al. 2001, pp. 6, 9).

Brown tree snake—The brown tree snake (BTS), native to coastal eastern Australia and north through Papua New Guinea and Melanesia, was accidentally introduced to Guam shortly after World War II (Rodda and Savidge 2007, p. 307). This arboreal, nocturnal snake was first observed near the Fena Reservoir in the Santa Rita area, and now occupies all ecosystems on Guam (Rodda and Savidge 2007, p. 314). There are reported sightings of the BTS on Saipan; however, there are no known established populations on Saipan at this time (Campbell 2014, pers. comm.; Phillips 2014, pers. comm.). The BTS is believed responsible for the extirpation of 13 of Guam's 22 native bird species (including all but 1 of its native forest bird species), and for contributing to the elimination of the Mariana fruit bat, the Pacific sheath-tailed bat, and Slevin's skink populations from the island (Rodda and Savidge 2007, p. 307).

The loss or severe reduction of so many bird species and other small native animal species on Guam has ecosystem-wide impacts, since many of these bird and small animal species were responsible for seed dispersal and pollination of native plants (Perry and Morton 1999, p. 137; Rodda and Savidge 2007, p. 311; Rogers 2008, in litt.). Some report that the BTS has eliminated virtually all native seed dispersers (Fritts and Rodda 1998, p. 129). Field studies have demonstrated that seed dispersal of selected native plant species (*Aglaia mariannensis, Elaeocarpa joga,* and *Premna obtusifolia*) has declined on Guam as

compared to neighboring islands (Rota, Saipan, and Tinian), due to BTS predation on native birds and other small native vertebrate species (Ritter and Naugle 1999, pp. 275–281; Rogers 2008, in litt.; Rogers 2009, in litt.). Almost three quarters of the native tree species on Guam were once dependent on birds to eat their fruits and disperse their seeds (Rogers 2009, in litt.). Detailed studies on the native tree *P. obtusifolia* show that seeds handled by birds are twice as likely to germinate than seeds that fall off the tree and land directly below on the forest floor (by either simply nicking the seed and dropping it, or fully digesting the outer seed coat and excreting it in feces) (Rogers 2009, in litt.). An impact at one trophic level (elimination of seed dispersers) has cascading effects on other trophic levels, and can affect ecosystem stability (Perry and Morton 1999, p. 137).

The brown tree snake's elimination of native plant seed dispersers is an indirect threat that adversely affects 2 of the 4 described ecosystems (forest and savanna), and the habitat of 18 of the 23 species proposed for listing as endangered or threatened (all 14 plant species and 4 of the 9 animal species, including the Mariana eight-spot butterfly, the Guam tree snail, the humped tree snail, and the fragile tree snail).

Habitat Destruction and Modification by Nonnative Plants

Native vegetation on the Mariana Islands has undergone extreme alteration because of past and present land management practices, including ranching, the deliberate introduction of nonnative plants and animals, agricultural development, military actions, and war (Ohba 1994, pp. 17, 28, 54–69; Mueller-Dombois and Fosberg 1998, p. 242; Berger et al. 2005, pp. 45, 105, 110, 218, 347, 350; CNMI–SWARS 2010, pp. 7, 9, 13, 16). Some nonnative plants were brought to the Mariana Islands by various groups of people, including the Chamorro, for food or cultural reasons.

The native flora of the Mariana Islands (plant species that were present before humans arrived) consisted of no more than 500 taxa, 10 percent of which were endemic (species that occur only in the Mariana Islands). Over 100 plant taxa have been introduced from elsewhere, and at least one third of these have become pests (i.e., injurious plants) (Stone 1970, pp. 18–21; Mueller-Dombois and Fosberg 1998, pp. 242–243, 249, 262–263; Costion and Lorence 2012, pp. 51–100). Of these approximately 30 nonnative pest plant species, at least 9 have altered the habitat of 20 of the 23 species proposed for listing as endangered or threatened species (only 3 of the animal species, the Pacific sheath-tailed bat, the Slevin's skink, and the Mariana wandering butterfly, are not directly impacted by nonnative plants (see Table 3)).

Nonnative plants degrade native habitat in the Mariana Islands by: (1) Modifying the availability of light through alterations of the canopy structure; (2) altering soil-water regimes; (3) modifying nutrient cycling; (4) altering the fire regime affecting native plant communities (e.g., successive fires that burn farther and farther into native habitat, destroying native plants and removing habitat for native species by altering microclimatic conditions to favor alien species); and (5) ultimately converting native-dominated plant communities to nonnative plant communities (Smith 1985, pp. 217–218; Cuddihy and Stone, 1990, p. 74; Matson 1990, p. 245; D'Antonio and Vitousek 1992, p. 73; Ohba 1994, pp. 17, 28, 54–69; Vitousek et al. 1997, pp. 6–9; Mueller-Dombois and Fosberg 1998, pp. 242–243, 249, 262–263; Berger et al. 2005, pp. 45, 105, 110, 218, 347, 350; CNMI–SWARS 2010, pp. 7, 9, 13, 16).

The following list provides a brief description of the nonnative plants that impose the greatest negative impacts to forest, savanna, and stream ecosystems and the proposed species that depend on these ecosystems (all 14 of the plant species and 6 of the animal species, including the Mariana eight-spot butterfly, Rota blue damselfly, humped tree snail, Langford's tree snail, Guam tree snail, and fragile tree snail).

- *Antigonon leptopus* (chain of hearts, Mexican creeper, coral vine), a perennial vine native to Mexico, has become widespread throughout the Mariana Islands. This species is a fast-growing, climbing vine that can reach up to 25 ft (8 m) in length, and smothers all native plants in its path (University of Florida Center for Aquatic and Invasive Plants (UF) 2014, in litt.). The fact that this species can tolerate poor soil and a wide range of light conditions makes this species a very successful invasive plant (UF 2013, in litt.).
- *Coccinia grandis* (ivy or scarlet gourd), native throughout Africa and Asia, is an aggressive noxious pantropical weedy vine that forms dense blankets that smother vegetation, and currently proliferates on Guam and Saipan (Space and Falanruw 1999, pp. 3, 9–10). This species is considered the most invasive and serious threat to forest health by the CNMI DFW (CNMI–SWARS 2010, p. 15). Currently, *C. grandis* covers nearly 80 percent of Saipan (CNMI–SWARS 2010, p. 15).
- *Chromaeolena odorata* (Siam weed, bitterbrush, masigsig), native to Central and South America, is an herbaceous perennial that forms dense tangled bushes up to 6 ft (2 m) in height, but can grow up to 20 ft (6 m) as a climber on other plants (Invasive Species Specialist Group—Global Invasive Species Database (ISSG–GISD) 2006, in litt.). This species can grow in a wide range of soils and vegetation types, giving it an advantage over native plants (ISSG–GISD 2006, in litt.). Dense stands of *C. odorata* prevent the establishment of native plant species due to competition and allelopathic (growth inhibition) effects (ISSG–GISD 2006, in litt.).
- *Lantana camara* (lantana), a malodorous, branched shrub up to 10 ft (3 m) tall, was brought to the Mariana Islands as an ornamental plant. Lantana is aggressive, thorny, and forms thickets, crowding out and preventing the establishment of native plants (Davis et al. 1992, p. 412; Wagner et al. 1999, p. 1,320).
- *Leucana leucocephala* (tangentangen, koa haole), a shrub native to the neotropics, is a nitrogen-fixer and an aggressive competitor that often forms the dominant element of the vegetation (Geesink et al. 1999, pp. 679–680).
- *Paspalum conjugatum* (Hilo grass, sour grass) is a perennial grass that occurs in wet habitats and forms a dense ground cover. Its small, hairy seeds are easily transported on humans and animals, or are carried by the wind through native forests, where it establishes and displaces native vegetation (Pace et al. 2000, p. 23; Motooka *et al.* 2003; Pacific Islands Ecosystems at Risk 2008).
- *Pennisetum* species are aggressive colonizers that outcompete most native species by forming widespread, dense, thick mats. *Pennisetum setaceum* (fountain grass) has been introduced to Guam (Space and Falanruw 1999, pp. 3, 5). Fountain grass occurs in dry, open places; barren lava flows; and cinder fields, is fire-adapted, and burns swiftly and hot, causing extensive damage to the surrounding habitat (O'Connor 1999, p. 1,581). On Hawaii Island, fountain grass is estimated to cover hundreds of thousands of acres and has the ability to become the dominant component in dry, open places in the Mariana Islands (O'Connor 1999, p. 1,578; Fox 2011, in litt.). *Pennisetum purpureum* and *P. polystachyon* have been introduced to Guam and Saipan (Space and Falanruw 1999, pp. 3, 5). *Pennisetum purpureum* (Napier grass, elephant grass) is a vigorous grass that produces razor-sharp

leaves and forms thick clumps up to 13 ft (4 m) that resemble bamboo (Plantwise 2014, in litt.). Tall, dense thickets of *P. purpureum* outcompete and smother native plants, and can dominate fire-adapted grassland communities (Holm et al. 1979, in Plantwise 2014, in litt.). Similarly, dense thickets of *Pennisetum polystachyon* (mission grass) alter the fire regime and outcompete and smother native plants (University of Queensland 2011, in litt.).

• *Triphasia trifolia* (limeberry, limoncito), a shade-tolerant woody shrub native to southeast Asia, Malaysia, and the Christmas Islands, is an aggressive plant that forms dense, spiny thickets in the forest understory that smother native plant species and outcompete them for light and water (CABI 2014–*Invasive Species Compendium Online Database*).

• *Vitex parviflora* (small leaved vitex; molave tree, agalondi), a medium-sized tree up to 35 ft (10 m) native to Indonesia, Malaysia, and the Philippines, often forms monotypic stands, and can spread by seeds and pieces of roots and stems. *Vitex parviflora* forms thickets that outcompete, prevent recruitment of, and exclude native plants (Guaminsects 2005, in litt.). *Vitex parviflora* has greatly altered native habitats on Guam (SWCA 2010, pp. 36, 67), and is one of the most dominant trees on the island (WERI–IREI 2014b, in litt.).

Habitat Destruction and Modification by Fire

Fire is a human-exacerbated threat to native species and native ecosystems throughout the Mariana Islands, particularly on the island of Guam. Wildfires plague forest and savanna areas on Guam every dry season despite the island's humid climate, with at least 80 percent of wildfires resulting from arson (JGPO–NavFac, Pacific 2010b, p. 1–9). Deer hunters on Guam and Rota frequently create fires in order to lure deer to new growth for easier hunting (Kremer 2014, in litt.; Boland 2014, in litt.). It is not uncommon for these fires to become wildfires that spread across large expanses of the savanna ecosystem as well as into the adjacent forest ecosystem. Between 1979 and 2001, more than 750 fires were reported annually on Guam, burning over 155 mi^2 (401 km^2) during this time period (JGPO–NavFac, Pacific 2010b, pp. 1–8). Six of these 750 fires burned over 1,000 ac (405 hectares (ha)) (JGPO–NavFac, Pacific 2010b, pp. 1–8). On the island of Rota on the Sabana, hunters often set fires, which burn into adjacent native forest. Fire can destroy dormant seeds of native species as well as plants themselves, even in steep or inaccessible areas. Successive fires that burn farther and farther into native habitat destroy native plants and remove habitat for native species by altering microclimate conditions to those favorable to alien plants. Alien plant species most likely to be spread as a consequence of fire are those that produce a high fuel load, are adapted to survive and regenerate after fire, and establish rapidly in newly burned areas.

Grasses (particularly those that produce mats of dry material or retain a mass of standing dead leaves) that invade native forests and shrublands provide fuels that allow fire to burn areas that would not otherwise easily burn (Fujioka and Fujii 1980 in Cuddihy and Stone 1990, p. 93; D'Antonio and Vitousek 1992, pp. 70, 73–74; Tunison et al. 2002, p. 122). Native woody plants may recover from fire to some degree, but fire shifts the competitive balance toward alien species (National Park Service 1989 in Cuddihy and Stone 1990, p. 93). Another factor that contributes to wildfires on Guam, and other Mariana Islands with nonnative ungulates, includes land clearing for pasturage and ranching, which results in fire-prone areas of nonnative grasses and shrubs (Stone 1970, p. 32; CNMI–SWARS 2010, pp. 7, 20). Further, the danger of fire increases following intense typhoons, due to large fuel accumulation (Donnelly 2010, p. 6). Wildfire is a threat to nine plant species (*Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Hedyotis megalantha, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Tabernaemontana rotensis,* and *Tuberolabium guamense*) and two animal species (the Guam tree snail (Guam) and the humped tree snail (Guam and Rota)), because individuals of these species occur in the savanna ecosystem or the forest ecosystem adjacent to the savanna ecosystem, on southern Guam (i.e., Cetti Watershed area) and on the Rota Sabana, where fires are common (Grimm 2012, in litt.; Gutierrez 2012, in litt.; Gutierrez 2013, in litt.).

Habitat Destruction and Modification by Typhoons

The Mariana Islands lie in the western North Pacific basin, which is the world's most prolific typhoon basin, with an annual average of 26 named tropical cyclones between 1951 and 2010, depending on the database used (Keener et al. 2012, p. 50). Typhoons are seasonal, occurring more often in the summer, and tend to be more intense during El Niño years (Gualdi et al. 2008, pp. 5,205, 5,208, 5,226). The North Pacific basin has been relatively calm the past decade; however, between 2002 and 2005, three typhoons (Typhoon Chataan (2002), Typhoon Tingting (2004), and Typhoon Nabi (2005)) and two super typhoons (Super Typhoon Pongsona (2002) and Super Typhoon Chaba (2004)) struck the Mariana Islands (Federal Emergency Management Agency (FEMA) 2014, in litt.). In the previous 20 years (between 1976 and 1997), only eight typhoons reached the island chain that caused damage warranting FEMA assistance (FEMA 2014, in litt.).

Typhoons may cause destruction of native vegetation and open the native canopy, thus modifying the availability of light, and creating disturbed areas conducive to invasion by nonnative pest species and nonnative plant species that compete for space, water, and nutrients, and alter basic water and nutrient cycling processes. This process leads to decreased growth and reproduction for all 14 plant species proposed for listing as endangered or threatened (see Table 3, above), and for the host plants (*Procris pendunculata, Elatostema calcareum,* and *Maytenus thompsonii*) for the 2 butterfly species addressed in this proposed rule (Perlman 1992, 9 pp.; Kitayama and Mueller-Dombois 1995, p. 671). Additionally, typhoons initiate a large pulse in the accumulation of debris and often trigger landslides with large debris flows (Lugo 2008, pp. 368, 372), as well as induce defoliation and wind-thrown trees, which can create conditions favorable to wildfires or which can result in the direct damage or destruction of individuals of the 14 plant species addressed in this proposed rule. Further, typhoon frequency globally may decrease; however, there may be some regional increases (e.g., in the western north Pacific), with an increase in the frequency of higher intensity events due to climate change (Emanuel et al. 2008, p. 361).

Typhoons constitute a threat to the nine animal species proposed for listing as endangered species in this rule, because the associated high winds may dislodge larvae, juveniles, or adult individuals from their host plants, caves, or streams, thereby increasing the likelihood of mortality caused by lack of essential nutrients for proper development; increase their exposure to predators (e.g., rats, BTS, monitor lizards, ants) (see *Factor C. Disease and Predation,* below); destroy host plants; open up the canopy and alter the microclimate; or cause direct physical damage. Damage by subsequent typhoons could further decrease the remaining native plant-dominated

habitat areas, and the associated food resources, that support the nine animal species. For plant and animal species that persist only in low numbers and restricted ranges, such as the 23 Mariana Islands species addressed here, natural disasters, such as typhoons, can be particularly devastating (Mitchell et al. 2005, p. 4–3).

Habitat Destruction and Modification by Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (Le Treut et al. 2007, p. 96). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (Le Treut et al. 2007, p. 104). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18).

Climate change will be a particular challenge for the conservation of biodiversity because the introduction and interaction of additional stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah et al. 2005, p. 4). The magnitude and intensity of the impacts of global climate change and increasing temperatures on native Mariana Island ecosystems are unknown. Currently, there are no climate change studies that address impacts to the specific Mariana Island ecosystems discussed here or any of the 23 individual species proposed for listing as endangered or threatened species that are associated with these ecosystems. There are, however, climate change studies that address potential changes in the tropical Pacific on a broader scale.

Based on the best available information, climate change impacts could lead to the loss of native species that comprise the communities in which the 23 species occur (Pounds et al. 1999, pp. 611–612; Still et al. 1999, p. 610; Benning et al. 2002, pp. 14,246–14,248; Allen et al. 2010, pp. 668–669; Sturrock et al. 2011, p. 144; Towsend et al. 2011, pp. 14–15; Warren 2011, pp. 165–166). In addition, weather regime changes (droughts, floods, typhoons) will likely result from increased annual average temperatures related to more frequent El Niño episodes as hypothesized for other Pacific Island chains (Giambelluca et al. 1991, p. iii). Future changes in precipitation and the forecast of those changes are highly uncertain because they depend, in part, on how the El Niño-La Niña weather cycle (a disruption of the ocean atmospheric system in the tropical Pacific having important global consequences for weather and climate) might change (State of Hawaii 1998, pp. 2–10). The 23 species proposed for listing as endangered or threatened species may be especially vulnerable to extinction due to anticipated environmental changes that may result from global climate change, due to their small population size and highly restricted ranges. Environmental changes that may affect these species are expected to include habitat loss or alteration and changes in disturbance regimes (e.g., storms and typhoons).

Climate Change and Ambient Temperature—The range of global surface warming since 1979 is 0.16 °C to 0.18 °C per decade (Trenberth et al. 2007, p. 237). Globally, the annual number of warm nights increased by about 25 days since 1951, with the greatest increase since the mid 1970s (Alexander et al. 2006, pp. 7–8). The bulk of the increase in mean temperature is related to a larger increase in minimum temperatures compared to the increase in maximum temperatures (Giambelluca et al. 2008, p. 1). Globally averaged, 2012 ranked as the eighth or ninth warmest year since records began in the mid- to late 1800s (Lander and Guard 2013, p. S–11).

To date, climate change indicators specific to the Mariana Islands have not been published; however, data collected on climate change indicators from the Pacific Region, (e.g., the Hawaiian Islands) show that, overall, the daily temperature range is decreasing, resulting in a warmer environment, especially at higher elevations and at night. Predicted changes associated with increases in temperature include, but are not limited to, a shift in vegetation zones upslope, shifts in animal species' ranges, changes in mean precipitation with unpredictable effects on local environments, increased occurrence of drought cycles, and increases in the intensity and number of hurricanes (i.e., typhoons) (Loope and Giambelluca 1998, pp. 514–515; Emanuel et al. 2008, p. 365; U.S. Global Change Research Program (US–GCRP) 2009, pp. 145–149, 153; Keener et al. 2010, pp. 25–28; Finucane et al. 2012, pp. 23–26; Keener et al. 2012, pp. 47–51). It is reasonable to extrapolate these predictions to the Mariana Islands as climate in this area is strongly influenced by the phase of ENSO (Lander and Guard 2013, pp. S192–S194). In addition, weather regime changes (e.g., droughts, floods, and typhoons) will likely result from increased annual average temperatures related to more frequent El Niño episodes in the Mariana Islands (Keener et al. 2012, pp. 35–37, 47–51), and elsewhere in the Pacific (Giambelluca et al. 1991, p. iii). However, despite considerable progress made by expert scientists toward understanding the impacts of climate change on many of the processes that contribute to El Niño variability, it is not possible to say whether or not El Niño activity will be affected by climate change (Collins et al. 2010, p. 391).

Globally, the increasing ambient temperature is creating a plethora of anticipated and unanticipated environmental changes such as melting ice caps, decline in annual snow mass, sea-level rise, ocean acidification, increase in storm frequency and intensity (e.g., hurricanes, typhoons, cyclones, and tornadoes), and altered precipitation patterns that contribute to regional increases in floods, heat waves, drought, and wildfires that also displace species and alter or destroy natural ecosystems (Pounds et al. 1999, p. 611; IPCC AR4 2007, p. 48; Marshall et al. 2008, p. 273; US–GCRP 2009, pp. 81–83; Allen et al. 2010, p. 669). These environmental changes are predicted to alter species migration patterns, lifecycles, and ecosystem processes such as nutrient cycles, water availability, and decomposition (IPCC AR4 2007, p. 48; Pounds et al. 1999, pp. 611–612; Sturrock et al. 2011, p. 144; Townsend et al. 2011, pp. 14–15; Warren 2011, pp. 221–226). The species extinction rate is predicted to increase congruent with ambient temperature increase (US–GCRP 2009, pp. 81–82). In the Mariana Islands, these environmental changes associated with a rise in ambient temperature can directly impact (by loss of individuals) and indirectly impact (by loss of habitat or food and sites for reproduction) the 23 species proposed for listing as endangered or threatened species in this

rule, and the ecosystems that support them, as discussed above.

Climate Change and Precipitation—As global surface temperature rises, the evaporation of water vapor increases, resulting in higher concentrations of water vapor in the atmosphere, further resulting in altered global precipitation patterns (U.S. National Science and Technology Council (US–NSTC) 2008, pp. 60–61; US–GCRP 2009, pp. 145–146). While annual global precipitation has increased over the last 100 years, the combined effect of increases in evaporation and evapotranspiration is causing land surface drying in some regions leading to a greater incidence and severity of drought (US–NSTC 2008, pp. 60–61; US–GCRP 2009, pp. 145–146). Over the past 100 years, most of the Pacific has experienced an annual decline in precipitation; however, the western North Pacific (e.g., western Micronesia, including the Mariana Islands) has experienced a slight increase (up to 14 percent on some islands) (US–NSTC 2008, p. 63; Keener et al. 2010, pp. 53–54). Increases in rain are associated with alterations in faunal breeding systems and increases in disease prevalence, flooding, and erosion (Easterling et al. 2000, p. 2073; Harvell et al. 2002, pp. 2,159 – 2,161; Nearing et al. 2004, pp. 48 – 49). It should be noted that although the western North Pacific typically experiences large amounts of rainfall annually, drought is a serious concern throughout Micronesia due to limited storage capacity and small groundwater supplies (Keener et al. 2012, pp. 49, 58, 119). Future changes in precipitation in the Mariana Islands are uncertain because they depend, in part, on how the El Niño-La Niña weather cycle might change (State of Hawaii 1998, pp. 2–10). Long periods of decline in annual precipitation result in a reduction in moisture availability, loss of wet forest, an increase in drought frequency, and a self-perpetuating cycle of invasion by nonnative plants, increasing fire-cycles, and increasing erosion. These impacts may negatively affect the 23 species proposed for listing as endangered or threatened species in this rule, and the ecosystems that support them.

Climate Change and Typhoons—A typhoon (as a tropical cyclone is referred to in the Northwest Pacific ocean) is the generic term for a medium- to large-scale, low-pressure storm system over tropical or subtropical waters with organized convection (i.e., thunderstorm activity) and definite cyclonic surface wind circulation (counterclockwise direction in the Northern Hemisphere) (Holland 1993, p. 7, NOAA 2011, in litt.). In the north Pacific Ocean, west of the International Date Line, once a typhoon reaches an intensity of winds of at least 150 mi per hour (65 m per second), it is classified as a super typhoon (Neumann 1993, pp. 1–2; NOAA 2011, in litt.). Climate modeling has projected changes in typhoon frequency and intensity due to global warming over the next 100 to 200 years (Emanuel et al. 2008, p. 360, Figure 8; Yu et al. 2010, pp. 1,355–1,356, 1,369–1,370); however, there are no certain climate model predictions for a change in the duration of the Pacific tropical cyclone storm season (which generally runs from May through November) (Collins et al. 2010, p. 396). The high winds and strong storm surges associated with typhoons, particularly super typhoons, have periodically caused great damage to the vegetation of the Mariana Islands. The strong winds can injure or cause death to the 9 animal species and the 14 plant species addressed in this proposed rule, and negatively impact the ecosystems that support them (see ''Habitat Destruction and Modification by Typhoons,'' above).

Climate Change and Sea-Level Rise—On a global scale, sea level is rising as a result of thermal expansion of warming ocean water; the melting of ice sheets, glaciers, and ice caps; and the addition of water from terrestrial systems (Climate Institute 2011, in litt.). Sea level rose at an average rate of 0.1 in (3.1 mm) per year between 1961 and 2003 (IPCC AR4 2007, p. 30), with a predicted increase in 2100 of 1.6 to 4.6 ft (0.5 to 1.4 m) above the 1990 level (Rahmstorf 2007, p. 368). Seven of the 23 species (5 plants: *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Heritiera longipetiolata,* and *Nervilia jacksoniae;* and 2 animals: the humped tree snail and the Mariana eight-spot butterfly (indirectly through impacts to its 2 host plants (*Procris pendunculata* and *Elatostema calcareum*)) have individuals that occur close to the coast in the adjacent forest ecosystem at or near sea level and may be negatively impacted by sea-level rise and coastal inundation due to climate change; however, there is no specific data available on how sea-level rise and coastal inundation will impact these species.

In summary, increased variability of ambient temperature, precipitation, typhoons, and sea-level rise and inundation would provide additional stresses on the 4 ecosystems and each of the 23 associated species because they are highly vulnerable to disturbance and related invasion of nonnative species. The risk of extinction as a result of such factors increases when a species' range is restricted, its habitat decreases, and its population numbers decline (IPCC 2007, pp. 8–11). In addition, these 23 species may be at a greater risk of extinction due to the loss of redundancy and resiliency created by their limited ranges, restricted habitat requirements, small population sizes, or low numbers of individuals. Therefore, we would expect these 23 species to be particularly vulnerable to projected environmental impacts that may result from changes in climate and subsequent impacts to their habitats (Loope and Giambelluca 1998, pp. 504–505; Pounds et al. 1999, pp. 611–612; Still et al. 1999, p. 610; Benning et al. 2002, pp. 14,246–14,248; Giambelluca and Luke 2007, pp. 13–15). Based on the above information, changes in environmental conditions that result from climate change are likely to negatively impact the 23 species proposed for listing as endangered or threatened species in this rule, and we do not anticipate a reduction in this potential threat in the near future.

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range

There are no approved Habitat Conservation Plans, Candidate Conservation Agreements, or Strategic Habitat Areas that specifically address these 23 species and threats to their habitat.

In 2012, the Guam Plant Extinction Prevention Program (GPEPP) was formed to address conservation concerns for a select group of native Mariana Islands plant species, including three of the plant species addressed in this proposed rule: *Heritiera longipetiolata, Maesa walkeri,* and *Psychotria malaspinae.* GPEPP is a partnership between the University of Guam (UOG), multiple Federal agencies (FWS, DOD, and USDA), Hawaii State Department of Land and Natural Resources, and the Hawaii Plant Extinction Prevention Program (Hawaii PEPP). The goal of GPEPP is to prevent the extinction of native Mariana Islands plant species that have fewer than 200 individuals remaining in the wild on the island of Guam (GPEPP 2014, in litt.). The group currently has funding limitations, so is focusing their efforts on tree species. The program's main objectives are to monitor, collect, survey, manage, and reintroduce native plant species in the Mariana Islands. They plan to work with conservation partners to protect wild populations and preserve genetic material (GPEPP 2014, in litt.).

A conservation project on Rota, administered through the Water and

Environmental Research Institute of the Western Pacific at the University of Guam, is aimed to analyze the island's hydrology, with the ultimate goal of protection of the Sabana Watershed and Talakhaya Springs (Keel et al. 2007, pp. 5, 22–23). Erosion control, revegetation, and water source preservation conducted as part of this project may provide protection to 9 of the 23 species in this proposed rule that currently or historically occurred on the southern side of the central plateau of Rota (6 plants: *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Maesa walkeri, Nervilia jacksoniae, Tuberolabium guamense;* 3 animals: the Mariana wandering butterfly, the Rota blue damselfly, and the humped tree snail).

A FWS Biological Opinion (1998) recommended that the Navy fund conservation and recovery projects in the Mariana Islands to improve habitat and population sizes of the federally listed Micronesian megapode as mitigation for bombing activities on Farallon de Medinilla. This resulted in the removal of ungulates from Sarigan, which has improved native habitat that supports two species in this proposed rule, the humped tree snail and Slevin's skink, by decreasing the impacts of trampling and browsing on native plants. Sarigan may serve as a location for recovery of Slevin's skink and the humped tree snail.

Since 1993, the USDA–Wildlife Services' Brown Tree Snake Program in Guam has been working to prevent the inadvertent spread of the snake to other locations, and to reduce negative impacts by the brown tree snake on economic and ecological resources. Experimentation with toxicant drops to control the brown tree snake is ongoing. The USDA–Wildlife Services is the lead agency for this work, in cooperation with the USDA–National Wildlife Research Center, the U.S. Geological Survey, FWS, and DOD. Results of the toxicant drops are currently under review (Phillips 2014, in litt.).

Area 50, a 59-ac (24-ha) enclosure on Andersen AFB, containing a relictual patch of limestone forest, was created to exclude ungulates and the brown tree snake (Hess and Pratt 2006, p. 2). This enclosure was maintained for ecosystem and species experimental research. Several individuals of the tree *Tabernaemontana rotensis* occur within the enclosure and would benefit from protection from predators and habitat disturbance (Hess and Pratt 2006, p. 7); however, researchers found the enclosure in a state of neglect, and invaded by nonnative plant species and pigs, with only 20 ac (8 ha) of undisturbed primary forest remaining by 2006 (Hess and Pratt 2006, p. 24). We are unaware of any efforts to continue maintenance of this enclosure since that time.

Rota's Department of Fish and Wildlife constructed exclosures for two occurrences of *Tabernaemontana rotensis* in the Sabana Conservation Area, but only one exclosure remains, as the other burned in a fire (Hess and Pratt 2006, p. 33; 65 FR 35029, June 1, 2000).

The Micronesian Challenge is an organization with the goal of preserving at least 30 percent of near-shore marine resources and 20 percent of the terrestrial resources across Micronesia by 2020 (Micronesian Challenge 2011, in litt.). The CNMI government is already attempting to meet this goal by planning to designate conservation lands within native forest (CNMI–SWARS 2010, p. 30). The Micronesian Challenge organization has partnered with many national and international environmental organizations (e.g., Federated States of Micronesia, The Republic of the Marshall Islands, The Nature Conservancy, and the New York Botanical Gardens), and focuses on conservation outreach to native Micronesians and visitors (Micronesian Challenge 2011, in litt.).

Summary of Habitat Destruction and Modification

The threats to the habitats of each of the 23 Mariana Islands species are occurring throughout the entire range of each of the species, except where noted above, with consequent deleterious effects on individuals and populations of these species. These threats include land conversion by agriculture and urbanization, habitat destruction and modification by nonnative animals and plants, fire, natural disasters, environmental changes resulting from climate change, and compounded impacts due to the interaction of these threats. While the conservation measures described above address some threats to the 23 species, due to the pervasive and expansive nature of the threats resulting in habitat degradation, these measures are insufficient to eliminate these threats to any of the 23 species addressed in this proposed rule.

Development and urbanization represents a serious and ongoing threat to all 23 species because they cause permanent loss and degradation of habitat. The effects from ungulates are ongoing because ungulates currently occur in all 4 ecosystems that support the 23 species in this proposed rule. The threat of habitat destruction and modification posed by introduced ungulates is serious, because they cause: (1) Trampling and grazing that directly impacts plants, including 10 of the 14 plant species addressed in this rule, and impacts the 2 host plants used by the Mariana eight-spot butterfly for shelter, foraging, and reproduction; (2) increased soil disturbance, leading to mechanical damage to individuals of 10 of the 14 plant species, and also the host plants for the Mariana eight-spot butterfly; (3) creation of open, disturbed areas conducive to weedy plant invasion and establishment of alien plants from dispersed fruits and seeds, which results over time in the conversion of a community dominated by native vegetation to one dominated by nonnative vegetation; and (4) increased erosion, leading to destabilization of soils that support native plant communities, elimination of herbaceous understory vegetation, and creation of disturbed areas into which nonnative plants invade. The BTS and rats both negatively impact the four ecosystems by eating native animals that native plants rely on to disperse seeds, limiting the regenerative capacity of the native forest. These threats are expected to continue or increase without ungulate control or eradication.

Nonnative plants represent a serious and ongoing threat to 20 of the 23 species addressed in this proposed rule (all 14 plant species, the Mariana eight-spot butterfly, the Rota blue damselfly, and all 4 tree snails) (see Table 3) through habitat destruction and modification, because they: (1) Adversely impact microhabitat by modifying the availability of light; (2) alter soil-water regimes; (3) modify nutrient-cycling processes; (4) alter fire characteristics of native plant habitat, leading to incursions of fire-tolerant nonnative plant species into native habitat; (5) outcompete, and possibly directly inhibit the growth of, native plant species; and (6) create opportunities for subsequent establishment of nonnative vertebrates and invertebrates. Each of these threats can convert native-dominated plant communities to nonnative plant communities (Cuddihy and Stone 1990, p. 74; Vitousek 1992, pp. 33–36). This conversion has negative impacts on all 14 plant species addressed here, as well as the native plant species upon which the Mariana eight-spot butterfly and the Rota blue damselfly depend for essential life-history needs. For example, nonnative plants that outcompete native plants can destabilize streambanks, exacerbating the potential for landslides and rockfalls, in turn dislodging Rota

blue damselfly eggs and naiads from streams, and also displace or destroy vegetation used for perching by adults, leaving them more susceptible to predation.

The threat from fire to 11 of the 23 species in this proposed rule that depend on the savanna ecosystem and adjacent forest ecosystems (9 plant species: *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Hedyotis megalantha, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Tabernaemontana rotensis,* and *Tuberolabium guamense;* and 2 animal species: the Guam tree snail and the humped tree snail) (see Table 3, above) is serious and ongoing because fire damages and destroys native vegetation, including dormant seeds, seedlings, and juvenile and adult plants. After a fire, nonnative, invasive plants, particularly fire-tolerant grasses, outcompete native plants and inhibit their regeneration (D'Antonio and Vitousek 1992, pp. 70, 73–74; Tunison et al. 2002, p. 122; Berger et al. 2005, p. 38; CNMI–SWARS 2010, pp. 7, 20; JGPO–NavFac, Pacific 2010b, pp. 4–33). Successive fires that burn farther and farther into native habitat destroy native plants and animals, and remove habitat for native species by altering microclimatic conditions and creating conditions favorable to alien plants. The threat from fire is unpredictable but increasing in frequency in the savanna ecosystem that has been invaded by nonnative fire-prone grasses, and that is subject to abnormally dry to severe drought conditions.

Natural disasters such as typhoons are a threat to native terrestrial habitats on the Mariana Islands in all 4 ecosystems addressed here, and to all 14 plant species identified in this proposed rule, because they result in direct impacts to ecosystems and individual plants by opening the forest canopy, modifying available light, and creating disturbed areas that are conducive to invasion by nonnative pest plants (Asner and Goldstein 1997, p. 148; Harrington et al. 1997, pp. 346–347; Berger et al. 2005, pp. 36, 45, 71, 100, 144; CNMI–SWARS 2010, p. 10; JGPO–NavFac, Pacific 2010b, pp. 1–8). In addition, typhoons are a threat to the nine animal species in this rule because strong winds and intense rainfall can kill individual animals, and can cause direct damage to streams (Polhemus 1993, pp. 86–87). High winds and torrential rains associated with typhoons can also destroy the host plants for the two butterfly species, and can dislodge individual butterflies and their larvae from their host plants and deposit them on the ground where they may be crushed by falling debris or eaten by nonnative wasps and ants. In addition, the high winds can dislodge bats from their caves and cause individual harm or death. The impacts of typhoons can be particularly devastating to the 23 species because, as a result of other threats, they now persist in low numbers or occur in restricted ranges and are therefore less resilient to such disturbances, rendering them highly vulnerable. Furthermore, a particularly destructive super typhoon could potentially drive localized endemic species to extinction in a single event. Typhoons pose an ongoing threat because they are unpredictable and can occur at any time.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Plants

We are not aware of any threats to the 14 plant species that would be attributed to overutilization for commercial, recreational, scientific, or educational purposes.

Animals

We are not aware of any threats to five of the nine animal species (the two Mariana butterflies, Pacific sheath-tailed bat, Slevin's skink, or Rota blue damselfly) addressed in this proposed rule that would be attributed to overutilization for commercial, recreational, scientific, or educational purposes. We do have evidence indicating that collection is a threat to the four tree snail species addressed in this proposed rule, as discussed below.

Tree Snails—Tree snails can be found around the world in tropical and subtropical regions and have been valued as collectibles for centuries. Evidence of tree snail trading among prehistoric Polynesians was discovered by analysis of the multi-archipelagic distribution of the Tahitian endemic *Partula hyalina* and related taxa (Lee et al. 2007, pp. 2,907, 2,910). In their study, Lee et al. (2007, pp. 2,908–2,910) found evidence that *P. hyalina* had been traded as far away as Mangaia in the Southern Cook Islands, a distance of over 500 mi (805 km). The endemic Hawaiian tree snails within the family Achatinellidae were extensively collected for scientific as well as recreational purposes by Europeans in the 18th to early 20th centuries (Hadfield 1986, p. 322). Historically, tree snails were abundant in the Pacific Islands. During the 1800s collectors observed 500 to 2,000 snails per tree, and sometimes collected more than 4,000 snails in several hours (Hadfield 1986, p. 322). Likewise, in the Mariana Islands, Crampton (an early naturalist in the islands) alone took 2,666 adult *Partula gibba* snails from 8 sites on Sapian in just 6 days in 1925 (Crampton 1925, p. 100). Repeated collections of hundreds to thousands of individuals at a time by early collectors may have contributed to decreased population sizes and reduction of reproduction potential due to the removal of potential breeding adults (Hadfield 1986, p. 327).

The collection of tree snails persists to this day, and the market for rare tree snails serves as an incentive to collect them. A search of the Internet (e.g., eBay and Etsy) reveals Web sites that offer snail shells from more than 100 land and sea snail species (along with corals and sand) from around the world, including rare and listed *Achatinella* and *Partulina.* These sites encourage collectors by making statements such as ''These assorted land snail shells from the tropical regions of the world are great for crafters and decorations for tanks'' and refer to shells with colorful names such as ''rainbow shells from Haiti'' (*http://www.shells-of-aquarius.com/snail-shells.html; https://www.etsy.com/uk/search?q=tree+snail*). Concerned citizens alert law enforcement of Internet sales and notify the public about illegal sales through personal web blogs (*http://bioacoustics.blogspot.com/2012/04/endangered-species-on-ebay.html*). Over the past 100 years, Mariana species of partulid tree snail shells have been made into jewelry and purses and sold to tourists (Kerr 2013, p. 3). Based on the history of collection of Pacific island tree snails, the market for Mariana tree snail shells, and the vulnerability of the small populations of the humped tree snail, Langford's tree snail, the Guam tree snail, and the fragile tree snail, we consider collection a threat to the four endemic Mariana tree snail species proposed for listing as endangered species in this rule.

Summary of Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We have no evidence to suggest that overutilization for commercial, recreational, scientific, or educational purposes poses a threat to any of the 14 plant species, 2 butterflies, Pacific sheath-tailed bat, Slevin's skink, or Rota blue damselfly proposed for listing as endangered or threatened species. We consider the four species of tree snails vulnerable to the impacts of overutilization due to collection for trade or market. Based on the history of collection of Pacific tree snails, the current market for Marianas tree snail

shells and tree snail shells world-wide, and the inherent vulnerability of the small populations of the Guam tree snail, the humped tree snail, Langford's tree snail, and the fragile tree snail to the removal of breeding adults, we consider collection to pose a serious and ongoing threat to these species.

Factor C. Disease and Predation

Disease

We are not aware of any threats to the 23 species addressed in the proposed rule that would be attributable to disease.

Predation and Herbivory

Multiple animal species, ranging from mammals and rodents to reptiles and insects, are reported to impact 17 of the 23 species proposed for listing as endangered or threatened species in this rule by means of predation or herbivory (Table 3). Those species that have the most direct negative impact on the 23 species include: feral pigs, Philippine deer, rats, the brown tree snake, monitor lizards, Cuban slugs (*Veronicella cubensis*); the manokwari flatworm (*Platydemus manokwari*), the cycad aulacaspis scale, ants (*Tapinoma minutum, Technomyrmex albipes, Monomorium floricola,* and *Solenopsis geminata*), and parasitoid wasps (*Telenomus* sp. and *Ooencyrtus* sp.). Data show these nonnative animals have caused a decline of 17 of the 23 species (Intoh 1986 in Conry 1988, p. 26; Fritts and Rodda 1998, pp. 130–133). Although feral goats, cattle, and water buffalo occur on one or more of the Mariana Islands and are recognized to negatively impact the ecosystems in which they occur (see *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range,* above), we have no direct evidence that goats, cattle, or water buffalo browse specifically on any of the 14 plant species addressed in this proposed rule.

Ungulates

Pigs—Feral pigs are widely recognized to negatively alter ecosystems (see ''Habitat Destruction and Modification by Introduced Ungulates,'' above). In addition, feral pigs have been observed to eat the leaves, fruits, seeds, seedlings, or bark, from 4 of the 14 plant species proposed for listing as endangered or threatened species in this rule (*Cycas micronesica, Heritiera longipetiolata, Psychotria malaspinae,* and *Solanum guamense*) in the forest ecosystem (Perlman and Wood 1994, pp. 135–136; Harrington et al. 2012, in litt.; Rogers 2012, in litt.; Marler 2013, pers. comm.). Similarly, on other Pacific islands (e.g., the Hawaiian Islands), pigs are known to eat and fell plants and remove the bark from a variety of native plant species, including *Clermontia* spp., *Cyanea* spp., *Cyrtandra* spp., *Hedyotis* spp., *Psychotria* spp., and *Scaevola* spp. (Diong 1982, p. 144). In addition, evidence of pigs feeding on *Cycas micronesica* has been observed, hypothesized for the intent to get at grubs (Harrington et al. 2012, in litt.). Pigs also eat standing living stems of plants, thought to be for the same intent (Marler 2013, pers. comm.). Feral pigs have been documented to eat the host plants that support the Mariana eight-spot butterfly (*Procris pendunculata* and *Elatostema calcareum*).

In addition to deer imposing negative impacts on habitat at an ecosystem scale in the Mariana Islands on which they occur (primarily Guam and Rota), deer consume leaves, seeds, fruits, and bark of 5 of the 14 plant species (*Cycas micronesica, Eugenia bryanii* (deer are known to consume all Mariana Islands *Eugenia* spp.), *Heritiera longipetiolata, Psychotria malaspinae,* and *Solanum guamense*), and the 2 host plants for the Mariana eight-spot butterfly (Wiles et al. 1999, pp. 198–200, 203; Rubinoff and Haines 2012, in litt.).

Other Nonnative Vertebrates

Rats

Rat Predation on Tree Snails—Rats (*Rattus* spp.) have been suggested as responsible for the greatest number of animal extinctions on islands throughout the world, including extinctions of various snail species (Towns et al. 2006, p. 88). Rats are known to prey upon Pacific island endemic arboreal snails (Hadfield et al. 1993, p. 621). In the Waianae mountains of Oahu, Meyer and Shiels (2009, p. 344) found shells of the endemic Oahu tree snail (*Achatinella mustelina*) with characteristic rat damage (e.g., damage to the shell opening and cone tip), but noted that, since a high proportion of crushed shells could not reliably be collected in the field, the impact of rat predation on snail populations may be underestimated. Rat predation on tree snails has also been observed on the Hawaiian Islands of Lanai (Hobdy 1993, p. 208; Hadfield 2005, in litt, p. 4), Molokai (Hadfield and Saufler 2009, p. 1,595), and Maui (Hadfield 2006, in litt.). Rat populations on Guam may be limited by predation by the brown tree snake, thereby limiting rat predation on native tree snails. Because rats occur in larger numbers on the Mariana Islands to the north of Guam, rat predation is considered a threat to the three tree snail species addressed in this proposed rule that occur on the other Mariana Islands (the humped tree snail on Rota, Aguiguan, Saipan, Sarigan, Alamagan, and Pagan; the fragile tree snail on Rota; and Langford's tree snail on Aguiguan).

Rat Predation on Bats—Rats may prey on the Pacific sheath-tailed bat, proposed for listing as endangered. Rats are omnivores and are opportunistic feeders. Rats have a widely varied diet consisting of nuts, seeds, grains, vegetables, fruits, insects, worms, snails, eggs, frogs, fish, reptiles, birds, and mammals (Fellers 2000, p. 525; GISD 2014, in litt.). Rats occur on Aguiguan, the only island on which the Pacific sheath-tailed bat is known to roost (Berger et al. 2005, p. 144). Rats are predators on young bats at roosts (that are nonvolant, i.e., have not yet developed the ability to fly) (Wiles et al. 2011, p. 306). The black rat was determined to be the primary factor in reproductive failure for a maternal colony of Townsend's big-eared bat (*Corynorhinus townsendii*) in California (Fellers 2000, pp. 524–525). Many of the roosting sites used by the Pacific sheath-tailed bat on Aguiguan appear to be impassable to rats; however, this may be due to rats limiting the selection of roosting sites because of their foraging and surveillance for prey in caves (Wiles and Worthington 2002, p. 18; Berger et al. 2005, p. 144). Because rats occur on all of the Mariana Islands, the Service considers rats a threat to the Pacific sheath-tailed bat.

Rat Predation on Skinks—Rats are known to prey on a variety of skink species around the globe (Crook 1973 in Towns et al. 2001, p. 3; Whitaker 1973 in Towns et al. 2001, p. 3; McCallum 1986 in Towns et al. 2001, p. 3; Towns et al. 2001, pp. 3–4, 6–8; Towns et al. 2006, pp. 875–877, 883). A New Zealand study showed the cause of the decline of rare reptiles on island reserves became evident through associations with the spread of Pacific rats (*Rattus exulans*) to these island reserves (Crook, 1973; Whitaker, 1973, 1978; and McCallum, 1986 in Towns et al. 2001, p. 3). Other restoration projects in New Zealand have demonstrated the native reptile populations undergo a resurgence following aggressive conservation activities to control predatory mammals, especially rodents (Towns et al. 2001, p. 3). The reptile species showing the most rapid response to removal of rats was the shore skink (*Oligosoma smithi*), with an increase of the capture frequency of shore skinks by up to 3,600 percent over 9 years (Towns 1994, unpub. in Towns et al. 2001, p. 10). Rats occur on all of

the Mariana Islands and are a threat to the Slevin's skink on the islands on which it currently occurs (Cocos Island, Alamagan, and Sarigan), and are a threat on islands where the skink was observed in the 1980s and 1990s (Guguan, Pagan, and Asuncion) but for which their current status is unkown. Once thought to be extirpated from Cocos Island (just offshore of Guam), Slevin's skink was observed on Cocos Island for the first time in more than 20 years following the eradication of rats and monitor lizards (Fisher 2012 pers. comm., in IUCN 2014, in litt.), indicating that predation by these nonnative species has a significant negative effect on skink populations.

Brown Tree Snake (BTS)

The BTS (see ''Habitat Destruction and Modification by Introduced Small Vertebrates,'' above) preys upon a wide variety of animals, and although it is only known to occur on Guam at this time, it is an enormous concern that the BTS will be introduced to other Mariana Islands (The Brown Tree Snake Control Committee 1996, pp. 1, 5). This nocturnal arboreal snake occupies all ecosystems on Guam, and consumes small mammals and lizards, usually in their neonatal state (Rodda and Savidge 2007, pp. 307, 314). The BTS is attributed with the extirpation, or contribution thereof, of 13 of Guam's 22 native bird species. Roosting and nesting birds, eggs, and nestlings are all vulnerable. If the BTS establishes on any other of the Mariana Islands it will impose a wide range of negative impacts, both environmental and economic (Campbell 2014, pers. comm.).

BTS Predation on Bats—The BTS has the potential to prey on fruit bats and the Pacific sheath-tailed bat, as BTS are known to climb in caves and prey on Mariana swiflets. Predation by tree snakes possibly caused losses of sheath-tailed bats in southern Guam in the 1950s and 1960s, but invaded northern Guam too late to have played a role in the bat's extirpation there (Wiles et al. 2011, p. 306). If the BTS should be introduced to Aguiguan, the only island in the Mariana archipelago that currently supports a population of the Pacific sheath-tailed bat, it would negatively affect this population, either by predation or by limiting available cave sites (Rodda and Savidge 2007, p. 307). Additionally, if the BTS is introduced to islands in the Mariana archipelago that historically supported the Pacific sheath-tailed bat (i.e., Guam, Rota, Saipan, Tinian, Anatahan, and Maug), recovery for this species will be difficult, and the Service considers the BTS a potential threat to the Pacific sheath-tailed bat on these islands.

BTS Predation on Skinks—The BTS is known to prey on a wide variety of small vertebrates on Guam, including skinks. Juvenile BTS are known to feed exclusively on lizards (including skinks) (Savidge 1988, in Rodda and Savidge 2007, pp. 314 – 315). In one study, 250 food items were taken from the digestive systems of BTS, and of these, 194 were lizards or lizard eggs (Savidge 1988 cited in Rodda and Fritts 1992, p. 166). If the BTS is introduced to any of the islands that currently (Cocos Island, Alamagan, and Sarigan) or historically (Guam, Rota, Tinian, Aguiguan, Guguan, and Pagan) support the Slevin's skink, it will negatively impact by decreasing populations and the numbers of individuals, and when combined with habitat loss, and other threats, could lead to their extirpation. Additionally, if the BTS is introduced to islands where the Slevin's skink occurred historically (Guam, Rota, Tinian, Aguiguan, Guguan, and Pagan), recovery for this species will be difficult, and the Service considers the BTS a potential threat to the Slevin's skink on these islands.

Monitor Lizard

Monitor Lizard Predation on Bats—The monitor lizard (hilitai, *Varanus indicus*), a carnivorous, terrestrial, arboreal lizard that can grow up to 3 ft (1 m) in length, is present on every island in the Mariana Islands except for Farallon de Medinilla, Guguan, Asuncion, Maug, and Uracas (Vogt and Williams 2004, pp. 76–77). It is unknown when the monitor lizard was introduced to Guam and the Northern Mariana Islands; however, it is known that the presence of this species in the islands predates European contact (Vogt and Williams, p. 77). Monitor lizards typically hunt over large areas and feed frequently on a wide variety of prey including, but not limited to, crabs, snails, snakes, lizards, skinks, fish, rats, squirrels, rabbits, sea turtle eggs, and birds (Losos and Greene 1988, pp. 379, 393; Bennet 1995 in ISSG–GISD 2007, in litt.). In the Mariana Islands, monitor lizards prey on both invertebrates and vertebrates, including large animals like chickens and the endangered Micronesian megapode (Martin et al. 2008 in IUCN 2007, in litt.). Considering their varied diet, which includes small vertebrates, and given the opportunity, predation by monitor lizards is a threat to the Pacific sheath-tailed bat proposed for listing as an endangered species in this rule, in the forest and cave ecosystems (USDA–Natural Resources Conservation Service 2009, p. 8).

Monitor Lizard Predation on Skinks—Monitor lizards are known to prey on all life stages of lizards (eggs, juveniles, and adults) and also other monitor lizards. Therefore, we expect monitor lizards negatively impact the Slevin's skink, also (Rodda and Fritts 1992, pp. 166 – 174; Vogt 2010, in litt.). The specific reasons for the decline of Slevin's skink (currently known from only 3 of the 10 islands where occurrences have been noted) are not known. Rodda et al. (1991) suggest that the combination of introduced species such as rats and shrews and other reptiles negatively impact native reptile populations, including Slevin's skink, by aggressively competing for habitat and food resources, and through predation (see ''Rat Predation on Skinks,'' above) (Rodda et al. 1991 in Berger et al. 2005, pp. 174–175). The monitor lizard is known to have a varied diet (coconut crabs, snails, snakes, lizards, skinks, fish, rats, squirrels, rabbits, sea turtle eggs, and birds.) (Berger et al. 2005, pp. 69–70, 90, 347–348; Losos and Greene 1988, pp. 379, 393; Bennet 1995 in ISSG–GISD 2007, in litt.); therefore, predation of Slevin's skink by monitor lizards is a threat to the Slevin's skink throughout its range in the Mariana Islands.

Nonnative Fish Predation on Damselflies

A survey of the Okgok River (or Okgok Stream, also known as Babao), conducted in 1996, showed that only four fish species (all native species) were present: the eel *Anguila marmorata,* the mountain gobies *Stiphodon elegans* and *Sicyopus leprurus,* and the flagtail or mountain bass, *Kuhlia rupestris.* Other freshwater species observed included a prawn, shrimps, and gastropods (Camacho et al. 1997, pp. 8–9). Densities of these native fish were low, especially in areas above the waterfall. Gobies can maneuver in areas of rapidly flowing water by using ventral fins that are modified to form a sucking disk (Ego 1956, in litt.). Freshwater gobies in Hawaii are primarily browsers and bottom feeders, often eating algae off rocks and boulders, with midges and worms being their primary food items (Ego 1956, in litt.; Kido et al. 1993, p. 47). The flagtails were only abundant in the lower reach of the stream. Researchers speculate that the Rota blue damselfly may have adapted its behavior to avoid the benthic feeding habits of native fish species.

Nonnative fish (*Gambusia* spp.) were introduced to Guam streams for mosquito control. Other nonnative fish from the aquarium trade (e.g., guppies,

swordtails, mollies, betta, oscars, and koi) have been released and documented in Guam streams. Currently, none of these fish are known from the Okgok River (Okgok Stream, Babao) on Rota, but biologists believe that *Gambusia* and guppies would be the most likely species to be introduced (Tibbatts 2014, in litt.). The release of aquarium fish into streams and rivers of Guam is well documented, but currently, no nonnative fish have been found in the Rota stream (Tibbatts 2014, in litt.). Therefore, release of nonnative fish is only a potential threat at this time, as they could impact the Rota blue damselfly by eating the naiad life stage, interrupting its life-cycle, and leading to its extirpation.

Nonnnative Invertebrates

Slug Herbivory on Native Plants—The nonnative Cuban slug (*Veronicella cubensis*) is considered one of the greatest threats to native plant species on Pacific Islands (Robinson and Hollingsworth 2006, p. 2). The Cuban slug is a recent introduction to the Micronesian islands. These terrestrial mollusks are generalist feeders, can attack a wide variety of plants, and switch food preferences if potential food plants change (Robinson and Hollingsworth 2006, p. 2). Slugs feed on the two host plants (*Elatostema calcareum* and *Procris pendunculata*) that support the Mariana eight-spot butterfly, proposed for listing as endangered. The Cuban slug has been known on Rota since 1996, occurs in large numbers, and is currently a pest to agricultural and ornamental crops on the island (Badilles et al. 2010, pp. 2, 4, 8). Some agricultural losses are reported to be as high as 70 percent of the crop (Badilles et al. 2010, p. 7). In addition, these slugs are known to attack orchids, which place all four species of orchids addressed in this proposed rule (*Bulbophyllum guamense, Dendrobium guamense, Nervilia jacksoniae,* and *Tuberolabium guamense*) at risk from slug predation on the islands of Guam and Rota (Badilles et al. 2010, p. 7; Cook 2012, in litt.).

Flatworm Predation on Tree Snails—The extinction of native land snails on several Pacific Islands has been attributed to the terrestrial Manokwari flatworm (*Platydemus manokwari*), native to western New Guinea (Sugiura 2010, p. 1,499). It is believed to occur on most of the southern Mariana Islands, and was first observed on Guam in 1978 (Hopper and Smith 1992, pp. 78, 82–83; Berger et al. 2005, p. 158). It was found to be effective in reducing the abundance of the nonnative African snail (*Achatinella fulica*) by as much as 95 percent (Hopper and Smith 1992, p. 82). This flatworm has also diminished two nonnative predatory snails, the rosy wolf snail (*Euglandina rosea*) and *Gonaxis* spp., both of which were previously considered a threat to the Mariana Islands tree snails (Kerr 2013, p. 5). The Manokwari flatworm, mostly ground-dwelling, has been observed to climb trees and feed on juvenile Partulid snails (Hopper and Smith 1992, p. 82). Due to its widespread occurrence on the southern Mariana Islands, and the risk of unintentional introduction on the southern Mariana Islands, predation by the Manokwari flatworm is considered a threat to all four tree snail species (the Guam tree snail, the humped tree snail, Langford's tree snail, and the fragile tree snail) proposed for listing as endangered species.

Scale Herbivory on Cycas—*Cycas micronesica* is currently declining on two (Guam and Rota) of the five Micronesian islands on which it occurs due to the presence of a phytophagous (plant-eating) insect, the cycad aulacaspis scale (*Aulacaspis yasumatsui*) (Marler and Lawrence 2012, pp. 238–240; Marler 2012, pers. comm.). The cycad aulacaspis scale, first described in Thailand (Takagi 1977 in Marler and Lawrence 2012, p. 233), was unintentionally introduced into the United States (Florida) a little over 20 years ago (Howard et al. 1999 in Marler and Lawrence 2012, p. 233), from where it spread to other regions. It was introduced to Guam in 2003, possibly via importation of the landscape cycad, *Cycas revoluta* (Marler and Lawrence 2012, p. 233). By 2005, the cycad aulacaspis scale had spread throughout the forests of Guam. Although this scale has infested *C. micronesica* populations on Guam, Rota, and the larger islands of Palau, most of the data has been collected on Guam, where more than 50 percent of the total known *Cycas* individuals occur (Marler 2012, pers. comm.). In 2002, prior to the scale infestation, *C. micronesica* was the most abundant tree species on Guam (Donnegan et al. 2002, p. 16). At an international meeting of the Cycad Specialist Group in Mexico in 2005, the cycad aulacaspis scale was identified as a critical issue for cycad conservation worldwide and was given priority status (IUCN/Species Survival Commission Cycad Specialist Group 2014, in litt.).

The cycad aulacaspis scale attacks every part of the leaf, which subsequently turns white. The leaf then collapses, and with progressive infestation, death of the entire plant can occur in less than 1 year (Marler and Muniappan 2006, pp. 3–4). Field studies conducted on the Ritidian National Wildlife Refuge on Guam by Marler and Lawrence (2012, p. 233) between 2004 and 2011 found that 6 years after the cycad aulacaspis scale was found on the refuge, mortality of *C. micronesica* there had reached 92 percent. The scale first killed all seedlings at their study site, followed by the juveniles, then most of the adult plants. The cycad aulacaspis scale is unusual in that it also infests the roots of its host plant at depths of up to 24 in (60 cm) in the soil (University of Florida 2014, in litt.). Marler and Lawrence (2012, pp. 238, 240) predict that if the predation by cycad aulacaspis scale is unabated, it will cause the extirpation of *C. micronesica* from western Guam by 2019.

Nonnative specialist arthropods like the cycad aulacaspis scale are particularly harmful to native plants when introduced to small insular oceanic islands because the native plants lack the shared evolutionary history with arthropods and have not developed resistance mechanisms (Elton 1958 in Marler and Lawrence 2012, p. 233), and the nonnative arthropods are not constrained by the natural pressures or predators of their native range (Howard et al. 1999, p. 26; Keane and Crawely 2002 in Marler and Lawrence 2012, p. 233). In addition, *C. micronesica* is the sole native host of the cycad aulacaspis scale on Guam, which raises concerns to biologists who predict that the extirpation of *C. micronesica* from Guam will bring about negative cascading ecosystem responses and manifold ecological changes (Marler and Lawrence 2012, p. 233). Because this scale spread to Rota in 2006 (Moore et al. 2006, in litt.), and the larger islands of Palau in 2008 (Marler in Science Daily 2012, in litt.), the same degree of negative impact to *C. micronesica* in these areas is likely to occur. As shown in other case studies worldwide, the scale insects are known to spread rapidly, within a few months, from the site of introduction (University of Florida 2014, in litt.).

Although the scale is present on the larger islands of Palau, it has not yet reached the numerous smaller Rock Islands, where more than 1,000 individuals of *C. micronesica* are estimated to occur. As scales can be wind dispersed, it could be a short amount time for infestation in the Rock Islands, as shown by its rapid spread throughout Florida between 1996 and 1998 (Marler 2014, in litt.; University of Florida 2014, in litt). The Rock Islands are a popular tourist destination, and the scale could also be inadvertently transported on plant material and soils (International Coral Reef Action Network 2014, in litt.). Yap is an

intermediate stop-over point for those traveling between Guam and Palau. *Cycas micronesica* on Yap are also considered at risk as scales can be spread by wind dispersal and on transportation of already infested plant material and soil; and because of the rapidity with which it spreads (ISSG–GISD 2014, in litt.; University of Florida 2014, in litt.). In addition, three other insects (a nonnative butterfly (*Chilades pandava*), a nonnative leaf miner (*Erechthias* sp.), and a native stem borer (*Dihammus marianarum*), opportunistically feed on *C. micronesica* weakened by the cycad aulacaspis scale, compounding its negative impacts (Marler 2013, pp. 1,334–1,336).

Scales, once established, require persistent control efforts (University of Florida 2014, in litt.; Gill 2012, in litt). Within the native range of the scale in southeast Asia, cycads are not affected, as the scale is kept in check by native predators; however, there are no predators of the scale in areas where it is newly introduced (Howard et al. 1999, p. 15). Release of biocontrols has been attempted to abate the scale infestation; however, these were unsuccessful: *Rhyzobius lophanthae* in 2004, which established immediately; *Coccobius fulvus* in 2005, which did not establish; and *Aphytis lignanensis* in 2012, which died in the laboratory prior to release (Moore et al. 2006, in litt.). *Rhyzobius lophanthae* prolonged the survival of many *Cycas* trees during the first 6 years of scale infestation; however, with time, the size difference between the scale and *R. lophanthae* proved to be a problem when it was observed that the scale could find locations on the *Cycas* plant body that the predator (*R. lophanthae*) could not access (Marler and Moore 2010, p. 838). Even with this biocontrol, *Cycas micronesica* populations are still declining and no reproduction has been observed on Guam since 2005 (Moore et al. 2006, in litt.).

Ant Predation on Butterflies—Four species of nonnative ants have been observed to prey upon the Mariana eight-spot butterfly (Schreiner and Nafus 1996, p. 3) and are believed to also negatively impact the Mariana wandering butterfly, the two butterfly species proposed for listing as endangered species in this rule: (1) dwarf pedicel ants (*Tapinoma minutum*); (2) tropical fire ants (*Solenopsis geminata*); (3) white-footed ants (*Technomyrmex albipes*); and (4) bi-colored trailing ants (*Monomorium floricola*). These ants parasitize the butterfly eggs (Schreiner and Nafus 1996, p. 3). Many ant species are known to prey on all immature stages of Lepidoptera and can completely exterminate populations (Zimmerman 1958). In a 1-year study, Schreiner and Nafus (1996, pp. 3–4) found predation by nonnative ants to be one of the primary causes of mortality (over 90 percent) in the Mariana eight-spot butterfly. These four ant species occur on the islands of Guam, Rota, and Saipan, which support the two butterfly species. Biologists observed high mortality of the instar larval stages of the Mariana eight-spot butterfly (Schreiner and Nafus 1996, pp. 2–4), for unknown reasons, but this, compounded with predation of eggs by ants, negatively impacts both the Mariana eight-spot butterfly and the Mariana wandering butterfly.

Parasitic Wasp Predation on Butterflies—Two native parasitoid wasps, *Telenomus sp.* (no common name) and *Ooencyrtus* sp. (no common name), are known to lay their eggs in eggs of native Mariana Islands Lepidoptera species (Mariana eight-spot butterfly (Guam and Saipan) and Mariana wandering butterfly (Guam and Rota) (Schreiner and Nafus 1996, pp. 2–5). These wasps are tiny and likely hitch-hiked with adult female butterflies in order to access freshly laid eggs, as has been observed in related species (Woelke 2008). These wasps negatively impact the Mariana eight-spot and Mariana wandering butterflies because they lay their own eggs within the butterfly eggs, thus preventing caterpillar development. Habitat destruction and loss of host plants, along with continued parasitism, act together to negatively affect populations and individuals of the Mariana eight-spot butterfly and the Mariana wandering butterfly. These parasitoid wasps occur on the three islands (Guam, Rota, and Saipan) that support the Mariana eight-spot butterfly and the Mariana wandering butterfly proposed for listing as endangered species.

Conservation Efforts To Reduce Disease or Predation

Conservation efforts to reduce predation mirror those mentioned under Factor A. *Habitat Destruction, Modification, or Curtailment of Its Range* (see ''Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range,'' above).

Summary of Disease and Predation

We are unaware of any information that indicates that disease is a threat to any of the 23 species in this proposed rule.

Although conservation measures are in place in some areas where one or more of the 23 Mariana Islands species occurs, information does not indicate that they are ameliorating the threat of predation described above. Therefore, we consider predation by nonnative animal species (pigs, deer, rats, brown tree snakes, monitor lizards, slugs, ants, and wasps) to pose an ongoing threat to 17 of 23 species addressed in this proposed rule (see Table 3, above) throughout their ranges for the following reasons:

(1) Observations and reports have documented that pigs and deer browse and trample 5 of the 23 plant species (*Cycas micronesica, Eugenia bryanii, Heritiera longipetiolata, Psychotria malaspinae,* and *Solanum guamense*), and the host plants of the Mariana eight-spot butterfly, addressed in this rule (see Table 3), in addition to studies demonstrating the negative impacts of ungulate browsing and trampling on native plant species of the islands (Spatz and Mueller-Dombois 1973, p. 874; Diong 1982, pp. 160–161; Cuddihy and Stone 1990, p. 67).

(2) Nonnative rats, snakes, and monitor lizards prey upon one or more of the following 6 animal species addressed in this proposed rule: the Pacific sheath-tailed bat, Slevin's skink, and the four tree snails.

(3) Ants and wasps prey upon the eggs and larvae of the two butterflies, the Mariana eight-spot butterfly and Mariana wandering butterfly.

(4) Nonnative slugs cause mechanical damage to plants and destruction of plant parts (branches, fruits, and seeds), including orchids, and are considered a threat to 4 of the 14 plant species in this rule (*Bulbophyllum guamense, Dendrobium guamense, Nervilia jacksoniae,* and *Tuberolabium guamense*).

(5) *Cycas micronesica* is currently preyed upon by the cycad aulacaspis scale on three of the five Micronesian islands (Guam, Rota, and Palau) on which it occurs (Hill et al. 2004, pp. 274 – 298; Marler and Lawrence 2012, p. 233; Marler 2012, pers. comm.). This scale has the ability to severely impact or even extirpate *C. micronesica* throughout its range if not abated.

These threats are serious and ongoing, act in concert with other threats to the species and their habitats, and are expected to continue or increase in magnitude and intensity into the future without effective management actions to control or eradicate them.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The Mariana Islands encompass two different political entities, the U.S. Territory of Guam and the U.S.

Commonwealth of the Northern Mariana Islands, and issues regarding existing regulatory measures for each entity are discussed in separate paragraphs below.

U.S. Territory of Guam

We are aware of regulatory measures regarding conservation of natural resources established by the Government of Guam (GovGuam). Under Guam Annotated Rules (GAR) Title 9—Animal Regulations (9 GAR—Animal Regulations), there are two divisions: (1) Division 1: Care and Conservation of Animals, and (2) Division 2: Conservation, Hunting and Fishing Regulations (*www.guamcourts.com,* accessed 9 Feb 2014). Division 1 addresses the importation of animals, animal and zoonotic disease control, commercial quarantine regulations, and plant and non-domestic animal quarantine; however, there is no documentation as to what extent this regulation is enforced. Division 2 Chapter 63 covers fish, game, forestry, and conservation. Article 2 (sections 63201 through 63208) describe authorities under the Endangered Species Act of Guam (Act). This Article vests regulatory power in the Guam Department of Agriculture. The Act prohibits, with respect to any threatened or endangered species of plants or wildlife of Guam and the United States: (1) Import or export of any such species to or from Guam and its territory; (2) take of any such species within Guam and its territory; (3) possession, processing, selling or offering for sale, delivery, carrying, transport, or shipping, by any means whatsoever, any such species; provided that any person who has in his possession such plants or wildlife at the time this provision is enacted into law may retain, process, or otherwise dispose of those plants or wildlife already in his possession, and (4) violation of any regulation or rule pertaining to the conservation, protections, enhancement, or management of any designated threatened or endangered species.

As of 2009 (the currently posted list), Guam DAWR recognizes 6 of the 23 species as endangered (the plant *Heritiera longipetiolata;* 3 of the 4 tree snails (the Guam tree snail, the humped tree snail, and the fragile tree snail), the Pacific sheath-tailed bat, and Slevin's skink). The other 17 species on Guam proposed here for listing are not currently recognized under the Endangered Species Act of Guam, but will be recognized as requiring protection by the Act upon their listing as endangered or threatened. However, this Act does not address the threats imposed upon the 21 species that occur currently or historically on Guam that are ongoing and are expected to increase in magnitude in the near future (Langford's tree snail and the Rota blue damselfly are the only species addressed in this rule with no record of occurrence on Guam). Only three species addressed in this proposed rule currently benefit from conservation actions on Guam, those conducted by the Guam PEPP for *Heritiera longipetiolata, Maesa walkeri,* and *Psychotria malaspinae,* as discussed in ''Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment of Its Range,'' above. Under Guam's ESA, the Department of Agriculture is authorized to establish priorities for the conservation and protection of threatened and endangered species and their associated ecosystems, but we are unaware of any documentation of these priorities or actions conducted for protection of the 21 Guam species.

U.S. Commonwealth of the Northern Mariana Islands (CNMI)

The CNMI has multiple regulatory measures in place intended to protect natural resources (*www.cnmilaw.org,* accessed 9 Feb 2014 (CNMI 2014, in litt.)). Six Chapters under Title 85: Department of Land and Natural Resources, encompass the most relevant regulatory measures with respect to the 16 CNMI species addressed in this proposed rule (*www.cnmilaw.org,* accessed 9 Feb 2014). Chapter 85–20 addresses animal quarantine rules and regulations, including domestic animals of all types, and associated port of entry laws. Chapter 95–30 addresses noncommercial fish and wildlife regulations, including the List of Protected Wildlife and Plant Species in the CNMI, which includes 1 of the 23 species addressed in this proposed rule (the plant *Tabernaemontana rotensis*). Chapter 95–30 also covers CNMI conservation areas. Chapter 85–60 covers the Division of Plant Industry, including plant quarantine regulations. Chapter 85–80 covers the Division of Zoning. Chapter 85–90 addresses permits necessary for the clearing and burning of vegetation, and removal of plants or plant products, or soil, from areas designated as diverse forests on public lands. Chapter 85–100 addresses BTS prevention regulations.

All six Chapters under Title 85 mentioned above have a component that is designed to protect native species, including rare species at risk from competition and predation by nonnative, and in some cases native, species. However, these regulations are modestly enforced and are currently inadequate to protect the 16 CNMI species in this proposed rule. Nonnative animals and plants have spread throughout the island chain despite these laws being in place. Greater enforcement of local laws in place may provide additional benefit to the 16 species proposed for listing as endangered or threatened species in this rule that occur in the CNMI (the plants *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Tabernaemontana rotensis,* and *Tuberolabium guamense;* the humped tree snail, Langford's tree snail, and the fragile tree snail; the two butterflies, the Pacific sheath-tailed bat, Slevin's skink, and the Rota blue damselfly).

U.S. Department of Defense (DOD)

The Sikes Act (16 U.S.C. 670) authorizes the Secretary of Defense to develop cooperative plans with the Secretaries of Agriculture and the Interior for natural resources on public lands. The Sikes Act Improvement Act of 1997 requires DOD installations to prepare Integrated Natural Resource Management Plans (INRMPs) that provide for the conservation and rehabilitation of natural resources on military lands consistent with the use of military installations to ensure the readiness of the Armed Forces.

In June 2013, the Department of the Navy, Joint Region Marianas (JRM), completed an INRMP to address the conservation, protection, and management of fish and wildlife resources on DOD-managed and -controlled areas on Guam, specifically Naval Base Guam and Andersen Air Force Base, including leased lands in the CNMI on Tinian and Farallon de Medinilla. On July 2, 2013, the Navy requested the Service's endorsement of the JRM INRMP. To determine if an INRMP provides a conservation benefit to listed species, the Service must consider: (1) The extent of area and features present; (2) the type and frequency of use of the area by the species; (3) the relevant elements of the INRMP in terms of management objectives, activities covered, and best management practices, and the certainty that the relevant elements will be implemented; and (4) the degree to which the relevant elements of the INRMP will protect the habitat from the types of effects that would be addressed through a destruction-or-adverse-modification analysis. The JRM INRMP is under review by the Service, but at present the Navy is operating under an INRMP that has not yet been approved

by the Service as providing a conservation benefit to the species considered for listing here that are associated with DOD lands or activities.

Summary of the Inadequacy of Existing Regulatory Mechanisms

Both the U.S. Territory of Guam and the U.S. Commonwealth of the Northern Mariana Islands have regulations in place designed to provide protection for their respective natural resources, including native forests, water resources, and the 23 species addressed in this rule; however, enforcement of these regulations is not documented. DOD is partnering with other agencies to prevent inadvertent transport of deleterious species (the brown tree snake) into Guam and the Mariana Islands, and from Guam to other areas; however, the current conservation actions proposed in the 2013 INRMP have not been determined to provide a benefit to the Mariana Islands species considered here, and threats imposed upon the 23 species persist and are expected to increase in magnitude (see Table 3). Examples include continued development and habitat modification, spread and introduction of nonnative plants and animals throughout the islands, fires started by hunters, sales of tree snail shells, and predation and herbivory by nonnative animals.

The capacity of the U.S. Territory of Guam and the U.S. Commonwealth of the Northern Mariana Islands and other Federal and State agencies in the Mariana Islands to mitigate the effects of introduced pests, such as ungulates and weeds, is limited due to the large number of taxa currently causing damage. Resources available to reduce the spread of these species and counter their negative ecological effects are limited. Despite the fact that both GovGuam and the CNMI receive assistance from the USDA, U.S. Department of Homeland Security, and other Federal agencies, the scope of threats remains challenging.

Factor E. Other Natural or Manmade Factors Affecting Their Continued Existence

Other factors that pose threats to some or all of the 23 species include ordnance and live-fire training, water extraction, recreational off-road vehicles, and small numbers of populations and small population sizes. Each threat is discussed in detail below, along with identification of which species are affected by these threats.

Ordnance and Live-Fire Training

Several individuals of the plants *Cycas micronesica* and *Heritiera longipetiolata,* proposed for listing as threatened and endangered species (respectively) in this rule, are located on the Tarague ridgeline near a firing range on Andersen AFB. There is a buffer zone at the end of the range, but not to either side. Ricochet bullets and ordnance have broken branches and made holes through parts of these trees, causing added stress and a possible avenue for disease (Guam DAWR 2013, pers. comm.). Military training is expected to be conducted within 5 Live-Fire Training Ranges (incorporating a Multi-Purpose Machine Gun Range), for 39 weeks out of the year, with 2 night-trainings per week (NavFac Engineering Command Pacific 2014, pp. ES–1, ES–5). Depending on the type of ammunition used, there could be substantial damage to vegetation, or a possible fire started from ordnance use, which could destroy individuals of *Cycas micronesica* and *Heritiera longipetiolata* and their habitat.

Water Extraction

The Rota blue damselfly was only first discovered in April 1996, outside the Talakhaya Water Cave (also known as Sonson Water Cave) located below the Sabana plateau on the island of Rota (see the species' description, above) (Polhemus et al. 2000, pp. 1–8; Camacho et al. 1997, p. 4). The Talakhaya Water Cave, As Onon Spring, and the perennial stream formed from runoff from the springs at the Water Cave support the only known population of the Rota blue damselfly. Rota's municipal water is obtained by gravity flow from these two springs (up to 1.8 Mgal/day) (Keel et al. 2007, pp. 1, 5; Stafford et al. 2002, p. 17). Under ordinary climatic conditions, this area supplies water in excess of demand but ENSO-induced drought conditions can lead to significantly reduced discharge, or may completely dewater the streams (Keel et al. 2007, pp. 3, 6, 19). In 1998, water captured from the springs was inadequate for municipal use, and water rationing was instituted (Keel et al. 2007, p. 6).

As the annual temperature rises resulting from global climate change, other weather regime changes such as increases in droughts, floods, and typhoons will occur (Giambelluca et al. 1991, p. iii). Increasing night temperatures cause a change in mean precipitation, with increased occurrences of drought cycles (Loope and Giambelluca 1998, pp. 514–515; Emanuel et al. 2008, p. 365; U.S. Global Change Research Program (US–GCRP) 2009, pp. 145–149, 153; Keener et al. 2010, pp. 25–28; Finucane et al. 2012, pp. 23–26; Keener et al. 2012, pp. 47–51). The limestone substrate of Rota is porous, with filtration through central Sabana being the sole water source for the few streams on the island and for human use. There are no other ground water supplies on the island, and storage capacity is limited. The Rota blue damselfly is dependent upon any water that escapes the Talakhaya Springs naturally, what is not already removed for human use. The likelihood of dewatering of the Talakhaya Springs is high due to climate change causing increased ENSO conditions, and increased human demand. The ''Public and Agency Participation'' section of the Comprehensive Wildlife Conservation Strategy for the Commonwealth of the Northern Mariana Islands (2005, p. 347) cites ''individuals state that the Department of Public Works has been increasing their water extraction from Rota's spring/stream systems. Historically, this water source flowed year-around, yet now they are essentially dry most of each year'' (see the species description ''Rota blue damselfly,'' and ''Stream Ecosystem,'' above, for further discussion). Water extraction is an ongoing threat to the Rota blue damselfly. The loss of this perennial stream would remove the only known breeding and foraging habitat of the sole known population of the Rota blue damselfly, likely leading to its extinction.

Recreational Vehicles

The savanna areas of Guam are popular for use of recreational vehicles. Damage and destruction caused by these vehicles are a direct threat to the plants *Hedyotis megalantha* and *Phyllanthus saffordii,* proposed for listing as endangered species in this rule, as well as a threat to the savanna habitat that supports these plant species (Guiterrez 2013, in litt.; Guam DAWR 2013, pers. comm.). *Hedyotis megalantha* and *P. saffordii* are particularly at risk, as the only known individuals of these species are scattered on the savanna.

Small Numbers of Individuals and Populations

Species that are endemic to single islands are inherently more vulnerable to extinction than are widespread species, because of the increased risk of genetic bottlenecks, random demographic fluctuations, climate change effects, and localized catastrophes, such as typhoons and disease outbreaks (Pimm et al. 1988, p. 757; Mangel and Tier 1994, p. 607). These problems are further magnified when populations are few and restricted to a very small geographic area, and when the number of individuals in each

population is very small. Species with these population characteristics face an increased likelihood of extinction due to changes in demography, the environment, genetic bottlenecks, or other factors (Gilpin and Soulé 1986, pp. 24–34). Small, isolated populations often exhibit reduced levels of genetic variability, which diminishes the species' capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). Very small, isolated populations are also more susceptible to reduced reproductive vigor due to ineffective pollination (plants), inbreeding depression (plants and animals), and hybridization (plants and insects). The problems associated with small population size and vulnerability to random demographic fluctuations or natural catastrophes are further magnified by synergistic interactions with other threats, such as those discussed above (see *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range* and *Factor C. Disease or Predation,* above).

Plants—In the 1990s, individuals of *Tabernaemontana rotensis* were vandalized and set on fire (Mehrhoff 2014, in litt.). Because this species is limited in its range, and is vulnerable to any vandalism, we consider vandalism to be a significant threat throughout its range.

The following 5 plant species have a very limited number of individuals (fewer than 50) in the wild: *Maesa walkeri, Psychotria malaspinae, Solanum guamense, Tinospora homosepala,* and *Tuberolabium guamense.* We consider these species highly vulnerable to extinction due to threats associated with small population size or small number of populations because:

- The only known occurrences of *Maesa walkeri, Psychotria malaspinae, Solanum guamense, Tinospora homosepala,* and *Tuberolabium guamense* are threatened either by ungulates, nonnative plants, fire, or a combination of these.
- *Psychotria malaspinae, Solanum guamense,* and *Tuberolabium guamense* are all known from fewer than 10 scattered individuals (Yoshioka 2008, p. 15; Cook 2012, in litt.; CPH 2012f—*Online Herbarium Database;* Harrington et al. 2012, in litt.; Grimm 2013, in litt.; Rogers 2012, in litt.; WCSP 2012d—*Online Herbarium Database*).

Animals—Like most native island biota, the single island endemics Guam tree snail, Langford's tree snail, and Rota blue damselfly are particularly sensitive to disturbances due to low number of individuals, low population numbers, and small geographic ranges. We consider these three species vulnerable to extinction due to the low number of individuals and low number of populations because these species occur on single islands, are declining in number of individuals and range, and are at risk of one or more of the following: predation by nonnative rats, monitor lizards, and flatworms; habitat degradation and destruction by nonnative ungulates; fire; drought; and water extraction (see *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range* and *Factor C. Disease or Predation,* above).

Conservation Efforts To Reduce Other Natural or Manmade Factors Affecting Its Continued Existence

We are unaware of any conservation actions planned or implemented at this time to abate the threats to the species negatively impacted by water extraction (Rota blue damselfly), recreational vehicles (*Hedyotis megalantha* and *Phyllanthus saffordii*), or low numbers (the plants *Maesa walkeri, Psychotria malaspinae, Solanum guamense, Tinospora homosepala,* and *Tuberolabium guamense;* the Guam tree snail and Langford's tree snail; and the Rota blue damselfly).

Summary of Other Natural or Manmade Factors Affecting Their Continued Existence

We consider the threat from limited numbers of populations and low numbers of individuals (fewer than 50) to be serious and ongoing for 5 plant species addressed in this proposed rule (*Maesa walkeri, Psychotria malaspinae, Solanum guamense, Tinospora homosepala,* and *Tuberolabium guamense*) because: (1) These species may experience reduced reproductive vigor due to ineffective pollination or inbreeding depression; (2) they may experience reduced levels of genetic variability, leading to diminished capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence; and (3) a single catastrophic event (e.g., fire) may result in extirpation of remaining populations and extinction of the species. This threat applies to the entire range of each species.

The threat to the Guam tree snail, Langford's tree snail and Rota blue damselfly from limited numbers of individuals and populations is ongoing and is expected to continue into the future because population numbers of these species are so low that: (1) They may experience reduced reproductive vigor due to inbreeding depression; (2) they may experience reduced levels of genetic variability leading to diminished capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence; (3) a single catastrophic event (e.g., super typhoon) may result in extirpation of remaining populations and extinction of these species; and (4) species with few known locations are less resilient to threats that might otherwise have a relatively minor impact on widely distributed species. For example, an increase in predation of these species that might be absorbed in a widely distributed species could result in a significant decrease in survivorship or reproduction of a species with limited distribution. Additionally, the limited distribution of these species thus magnifies the severity of the impact of the other threats discussed in this proposed rule.

Summary of Factors

The primary factors that pose serious and ongoing threats to 1 or more of the 23 species throughout their ranges in this proposed rule include: Habitat degradation and destruction by development, activities associated with military training and urbanization, nonnative ungulates and plants, rats, fire, typhoons, and climate change, and the interaction of these threats (Factor A); overutilization of tree snails due to collection for trade or market (Factor B); predation by nonnative animal species (ungulates, deer, rats, brown tree snakes, monitor lizards, slugs, flatworms, ants, and wasps) (Factor C); inadequate regulatory mechanisms to address the spread or control of nonnative species (Factor D); and ordnance and live-fire training, water extraction, recreational vehicles, and limited numbers of populations and individuals (Factor E). While we acknowledge the voluntary conservation measures described above may help to ameliorate 1 or more of the threats to the 23 species addressed in this proposed rule, these conservation measures are insufficient to control or eradicate these threats to the point where listing is not warranted.

Proposed Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on (A) The present or threatened destruction,

modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the 23 species proposed for listing as endangered or threatened species in this rule. We find all 23 species face threats that are ongoing and expected to continue into the future throughout their ranges from the present destruction and modification of their habitats from nonnative feral ungulates, rats, and nonnative plants (Factor A). Destruction and modification of habitat by development, military training, and urbanization is a threat to 13 of the 14 plant species (*Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Eugenia bryanii, Hedyotis megalantha, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Psychotria malaspinae, Solanum guamense, Tabernaemontana rotensis,* and *Tuberolabium guamense*) and to 8 of the 9 animal species (the Pacific sheath-tailed bat, Slevin's skink, the Mariana eight-spot butterfly, the Rota blue damselfly, the Guam tree snail, the humped tree snail, Langford's tree snail, and the fragile tree snail). Habitat destruction and modification from fire is a threat to nine of the plant species (*Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Hedyotis megalantha, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Tabernaemontana rotensis,* and *Tuberolabium guamense*) and two tree snails (the Guam tree snail and the humped tree snail). Destruction and modification of habitat from typhoons is a threat to all 23 species. Rising temperatures and other effects of projected climate change may impact all 23 species, but there is limited information on the exact nature of impacts that these species may experience (Factor A).

Overcollection for commercial and recreational purposes poses a threat to all four tree snail species (the Guam tree snail, the humped tree snail, Langford's tree snail, and the fragile tree snail) (Factor B).

Predation or herbivory on 9 of the 14 plant species (*Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Eugenia bryanii, Heritiera longipetiolata, Nervilia jacksoniae, Psychotria malaspinae, Solanum guamense,* and *Tuberolabium guamense*) and 8 of the 9 animals (all except the Rota blue damselfly) by feral pigs, deer, brown tree snakes, rats, monitor lizards, slugs, flatworms, ants, or wasps poses a serious and ongoing threat (Factor C).

The inadequacy of existing regulatory mechanisms (i.e., inadequate protection of habitat and inadequate protection from the introduction of nonnative species) poses a serious and ongoing threat to all 23 species (Factor D).

There are serious and ongoing threats to five plant species (*Maesa walkeri, Psychotria malaspinae, Solanum guamense, Tinospora homosepala,* and *Tuberolabium guamense*), the Guam tree snail, Langford's tree snail, the fragile tree snail, and Rota blue damselfly due to small numbers of populations and individuals; to *Tabernaemontana rotensis* due to vandalism; to *Cycas micronesica* and *Heritiera longipetiolata* from ordnance and live-fire training; to the Rota blue damselfly from water extraction; and to *Hedyotis megalantha* and *Phyllanthus saffordii* from recreational vehicles (Factor E) (see Table 3). These threats are exacerbated by these species' inherent vulnerability to extinction from stochastic events at any time because of their endemism, small numbers of individuals and populations, and restricted habitats.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We find that 21 of the 23 Mariana Islands species are presently in danger of extinction throughout their entire range, based on the severity and scope of the ongoing and projected threats described above. These 21 species are: the 12 plants *Bulbophyllum guamense, Dendrobium guamense, Eugenia bryanii, Hedyotis megalantha, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Psychotria malaspinae, Solanum guamense, Tinospora homosepala,* and *Tuberolabium guamense;* and all 9 animals: the Pacific sheath-tailed bat (*Emballonura semicaudata rotensis*), Slevin's skink (*Emoia slevini*), the Mariana eight-spot butterfly (*Hypolimnas octocula mariannensis*), the Mariana wandering butterfly (*Vagrans egistina),* the Rota blue damselfly (*Ischnura luta*), the Guam tree snail (*Partula radiolata*), the humped tree snail (*Partula gibba*), Langford's tree snail (*Partula langfordi*), and the fragile tree snail (*Samoana fragilis*).

We conclude these 21 species are endangered due to the small number of individuals representing the entire species and the limited or concentrated geographic distribution of those remaining individuals or populations, rendering the species in its entirety highly susceptible to extinction as a consequence of these imminent threats. These threats are exacerbated by the loss of redundancy and resiliency of these species, and the continued inadequacy of existing protective regulations. Therefore, on the basis of the best available scientific and commercial information, we have determined that each of these 21 species meets the definition of an endangered species under the Act. We find that threatened species status is not appropriate for these 21 species, as the threats are already occurring rangewide and are not localized, and because the threats are ongoing and expected to continue into the future. In addition, the remaining populations of these species are so small that we cannot conclude they are likely capable of persisting into the foreseeable future in the face of the current threats. We, therefore, propose to list these 21 species as endangered species in accordance with section 3(6) of the Act.

As noted above, the Act defines a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We propose to list two plant species as threatened species in accordance with section 3(6) of the Act, *Cycas micronesica* and *Tabernaemontana rotensis. Cycas micronesica* occurs on Guam, Rota, and Pagan in the CNMI, as well as on islands in the nations of Palau and Yap. More than 50 percent of the known individuals occur on Guam and Rota in the CNMI, and are currently impacted by the cycad aulacaspis scale, to the extent that botanists estimate the species could be largely extirpated from these two islands within 5 years, by 2019. The status of the species on Pagan is unknown, although only a small population is known from that island. While the scale has reached the larger islands of Palau, it has not yet reached the Rock Islands of Palau, or Yap, and these islands may afford some temporary protection for the remaining individuals while control methods and biocontrols for the cycad aulacaspis scale are undergoing research. Due to the rapid spread of the scale and associated high mortality, however, populations in Palau and Yap remain

highly vulnerable. Given its relatively greater population size and distribution on multiple islands, some of which have not yet been affected by the cycad aulacaspis scale, we conclude that *Cycas micronesica* is not currently in danger of extinction, thus endangered status is not appropriate. However, given the observed rapid spread of the cycad aulacaspis scale, the likelihood that the scale will soon be transported to areas that are currently unaffected, and the high mortality rate experienced by *Cycas micronesica* upon exposure to the scale, we conclude that *Cycas micronesica* is likely to become in danger of extinction within the foreseeable future. Therefore, on the basis of the best available scientific and commercial information, we propose that this species meets the definition of a threatened species under the Act.

Tabernaemontana rotensis was, until recently, believed to be part of the wider ranging *T. pandacaqui,* until genetic studies showed it to be unique to Guam and Rota. There may be as many as 8,000 individuals on Guam, but only a few on Rota; however, the threats of habitat destruction and modification, fire, typhoons, climate change, and inadequate regulatory mechanisms have a combined impact on all occurrences, to the extent that we believe it is likely to become in danger of extinction within the foreseeable future throughout all of its range. Because *Tabernaemontana rotensis* species still has a relatively large number of individuals, even in the face of current threats, we conclude the species will likely persist into the foreseeable future. As we do not conclude that *Tabernaemontana rotensis* is currently in danger of extinction, endangered status is not appropriate. However, because the species has been reduced to only a few individuals on Rota, and the remaining population on Guam is subject to a suite of ongoing threats as described above, we conclude that *Tabernaemontana rotensis* will become in danger of extinction within the foreseeable future. Therefore, on the basis of the best available scientific and commercial information, we propose that this species meets the definition of a threatened species under the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Each of the 23 Mariana Islands species proposed for listing in this rule is highly restricted in its range, and the threats occur throughout its range. Therefore, we assessed the status of each species throughout its entire range. In each case, the threats to the survival of these species occur throughout the species' ranges and are not restricted to any particular portion of those ranges. Accordingly, our assessment and proposed determination applies to each species throughout its entire range, and we do not need to further consider the status of each species in a significant portion of their respective ranges.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and territories and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, territories, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on all lands.

If these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State(s) of the U.S. Territory of Guam and the U.S. Commonwealth of the Northern Mariana Islands would be eligible for Federal funds to implement management actions that promote the protection or recovery of the 23 species. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although these species are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for any of these species. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part

402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

For the 23 plants and animals proposed for listing as endangered or threatened species in this rule, Federal agency actions that may require consultation as described in the preceding paragraph include, but are not limited to, actions within the jurisdiction of the Natural Resources Conservation Service, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and branches of the DOD. Examples of these types of actions include activities funded or authorized under the Farm Bill Program, Environmental Quality Incentives Program, Ground and Surface Water Conservation Program, Clean Water Act (33 U.S.C. 1251 et seq.), Partners for Fish and Wildlife Program, and DOD activities related to training, facilities construction and maintenance, or other military missions.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife and plants. The prohibitions, codified at 50 CFR 17.21 for endangered wildlife, and at 17.61 and 17.71 for endangered and threatened plants, respectively, apply. For listed wildlife species, these prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

With respect to endangered plants, prohibitions outlined at 50 CFR 17.61 make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession any such plant species from areas under Federal jurisdiction. In addition, for endangered plants, the Act prohibits malicious damage or destruction of any such species on any area under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of any such species on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Exceptions to these prohibitions are outlined in 50 CFR 17.62.

With respect to threatened plants, 50 CFR 17.71 provides that all of the provisions in 50 CFR 17.61 shall apply to threatened plants. These provisions make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession any such plant species from areas under Federal jurisdiction. In addition, the Act prohibits malicious damage or destruction of any such species on any area under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of any such species on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. However, there is the following exception for threatened plants. Seeds of cultivated specimens of species treated as threatened shall be exempt from all the provisions of 50 CFR 17.61, provided that a statement that the seeds are of ''cultivated origin'' accompanies the seeds or their container during the course of any activity otherwise subject to these regulations. Exceptions to these prohibitions are outlined in 50 CFR 17.72.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife and plant species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered wildlife and at 17.62 and 17.72 for endangered and threatened plants, respectively. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. With regard to endangered plants, the Service may issue a permit authorizing any activity otherwise prohibited by 50 CFR 17.61 for scientific purposes or for enhancing the propagation or survival of endangered plants. With regard to threatened plants, a permit issued under this section must be for one of the following: scientific purposes, the enhancement of the propagation or survival of threatened species, economic hardship, botanical or horticultural exhibition, educational purposes, or other activities consistent with the purposes and policy of the Act. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Pacific Region, Ecological Services, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, OR 97232–4181 (telephone 503–231–6131; facsimile 503–231–6243).

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the 23 species, including import or export across State, Territory or Commonwealth lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Introduction of nonnative species that compete with or prey upon the nine animal species, such as the introduction of competing, nonnative plants or animals to the Mariana Islands (U.S. Territory of Guam and U.S. Commonwealth of the Northern Mariana Islands); and

(3) The unauthorized release of biological control agents that attack any life stage of the nine animal species.

(4) Impacts to the nine animal species from destruction of habitat, disturbance from noise (related to military training), and other impacts from military presence.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION**

CONTACT). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Pacific Region, Ecological Services, Endangered Species Permits, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, OR 97232–4181 (telephone 503–231–6131; facsimile 503–231–6243).

If made final, Federal listing of the 23 species included in this proposed rule may invoke Commonwealth and Territory listing under CNMI and Guam Endangered Species laws (Title 85: § 85–30.1–101 and 5 GCA § 63205, respectively) and supplement the protection available under other local law. These protections would prohibit take of these species and encourage conservation by both government agencies. Further, the governments would be able to enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species. Funds for these activities could be made available under section 6 of the Act (Cooperation with the States and Territories). Thus, the Federal protection afforded to these species by listing them as endangered species would be reinforced and supplemented by protection under Territorial and Commonwealth law.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Pacific Islands Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Pacific Islands Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, as follows:

■ a. By adding an entry for ''Bat, Pacific sheath-tailed'' (*Emballonura semicaudata rotensis*), in alphabetical order under Mammals, to read as set forth below;

■ b. By adding an entry for ''Skink, Slevin's'' (*Emoia slevini*), in alphabetical order under Reptiles, to read as set forth below;

■ c. By adding an entry for ''Butterfly, Mariana eight-spot'' (*Hypolimnas octocula mariannensis*), ''Butterfly, Mariana wandering'' (*Vagrans egistina*), and ''Damselfly, Rota blue'' (*Ischnura luta*), in alphabetical order under Insects, to read as set forth below; and

■ d. By adding an entry for ''Snail, fragile tree'' (*Samoana fragilis*)'', ''Snail, Guam tree'' (*Partula radiolata*), ''Snail, humped tree'' (*Partula gibba*), and ''Snail, Langford's tree'' (*Partula langfordi*), in alphabetical order under Snails, to read as set forth below.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Bat, Pacific sheath-tailed (Payesyes).	*Emballonura semicaudata rotensis.*	U.S.A. (Guam, Mariana Islands).	Entire	E		NA	NA
*	*	*	*	*	*		*
REPTILES							
*	*	*	*	*	*		*
Skink, Slevin's (Guali'ek Halom Tano).	*Emoia slevini*	U.S.A. (Guam, Mariana Islands).	Entire	E		NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
INSECTS							
*	*	*	*	*	*		*
Butterfly, Mariana eight-spot.	*Hypolimnas octocula mariannensis.*	U.S.A. (Guam, Mariana Islands).	Entire	E		NA	NA
Butterfly, Mariana wandering.	*Vagrans egistina*	U.S.A. (Guam, Mariana Islands).	Entire	E		NA	NA
*	*	*	*	*	*		*
Damselfly, Rota blue	*Ischnura luta*	U.S.A. (Mariana Islands).	Entire	E		NA	NA
*	*	*	*	*	*		*
SNAILS							
*	*	*	*	*	*		*
Snail, fragile tree (Akaleha).	*Samoana fragilis*	U.S.A. (Guam, Mariana Islands).	Entire	E		NA	NA
*	*	*	*	*	*		*
Snail, Guam tree (Akaleha).	*Partula radiolata*	U.S.A. (Guam)	Entire	E		NA	NA
Snail, humped tree (Akaleha).	*Partula gibba*	U.S.A. (Guam, Mariana Islands).	Entire	E		NA	NA
*	*	*	*	*	*		*
Snail, Langford's tree (Akaleha).	*Partula langfordi*	U.S.A. (Mariana Islands).	Entire	E		NA	NA
*	*	*	*	*	*		*

* * * * *

■ 3. Amend § 17.12(h), the List of Endangered and Threatened Plants, by adding entries for *Bulbophyllum guamense, Cycas micronesica, Dendrobium guamense, Eugenia bryanii, Hedyotis megalantha, Heritiera longipetiolata, Maesa walkeri, Nervilia jacksoniae, Phyllanthus saffordii, Psychotria malaspinae, Solanum guamense, Tabernaemontana rotensis, Tinospora homosepala,* and *Tuberolabium guamense,* in alphabetical order under Flowering Plants, to read as set forth below.

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Bulbophyllum guamense.	Cebello halumtano	U.S.A. (Guam, Mariana Islands).	Orchidaceae	E		NA	NA
*	*	*	*	*	*		*
Cycas micronesica	Fadang	U.S.A. (Guam, Mariana Islands).	Cycadaceae	T		NA	NA
*	*	*	*	*	*		*
Dendrobium guamense.	None	U.S.A. (Guam, Mariana Islands).	Orchidaceae	E		NA	NA
*	*	*	*	*	*		*
Eugenia bryanii	None	U.S.A. (Guam)	Myrtaceae	E		NA	NA
*	*	*	*	*	*		*
Hedyotis megalantha	Paudedo	U.S.A. (Guam)	Rubiaceae	E		NA	NA
*	*	*	*	*	*		*
Heritiera longipetiolata.	Ufa-halomtano	U.S.A. (Guam, Mariana Islands).	Malvaceae	E		NA	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
Maesa walkeri	None	U.S.A. (Guam, Mariana Islands).	Primulaceae	E		NA	NA
*	*	*	*	*	*	*	
Nervilia jacksoniae	None	U.S.A. (Guam, Mariana Islands).	Orchidaceae	E		NA	NA
*	*	*	*	*	*	*	
Phyllanthus saffordii	None	U.S.A. (Guam)	Phyllanthaceae	E		NA	NA
*	*	*	*	*	*	*	
Psychotria malaspinae.	Aplokating-palaoan	U.S.A. (Guam)	Rubiaceae	E		NA	NA
*	*	*	*	*	*	*	
Solanum guamense	Bereng-henas halomtano.	U.S.A. (Guam, Mariana Islands).	Solanaceae	E		NA	NA
*	*	*	*	*	*	*	
Tabernaemontana rotensis.	None	U.S.A. (Guam, Mariana Islands).	Apocynaceae	T		NA	NA
*	*	*	*	*	*	*	
Tinospora homosepala.	None	U.S.A. (Guam)	Menispermaceae	E		NA	NA
*	*	*	*	*	*	*	
Tuberolabium guamense.		U.S.A. (Guam, Mariana Islands).	Orchidaceae	E		NA	NA
*	*	*	*	*	*	*	

Dated: September 16, 2014.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–22776 Filed 9–30–14; 8:45 am]

BILLING CODE 4310–55–P

FEDERAL REGISTER

Vol. 79 Wednesday,

No. 190 October 1, 2014

Part III

The President

Proclamation 9174—National Hunting and Fishing Day, 2014
Proclamation 9175—National Public Lands Day, 2014
Proclamation 9176—Gold Star Mother's and Family's Day, 2014

Federal Register
Vol. 79, No. 190
Wednesday, October 1, 2014

Presidential Documents

Title 3—

The President

Proclamation 9174 of September 26, 2014

National Hunting and Fishing Day, 2014

By the President of the United States of America

A Proclamation

Across America, hunting and fishing connect people of all ages to our Nation's splendor, instilling a conservation ethic that spans generations. As mist clears off glistening lakes and fog lifts from forests and grasslands, sportsmen and women carry forward a proud tradition rooted in self-reliance and environmental stewardship. On National Hunting and Fishing Day, we recognize all those who responsibly participate in these national pastimes and their contributions to the preservation of our land, water, and wildlife.

Our Nation's natural bounty bolsters our economy, supports tourism and recreation, and rejuvenates the human spirit. And as our parents and grandparents did, we have a profound obligation to protect these outdoor resources. Effective conservation ensures generations to come will be able to enjoy the beauty of our expansive and unspoiled wilderness. For decades, hunters and anglers have championed sustainable practices and supported environmental stewardship through hunting licenses and other small fees collected for the use of our public lands. As they teach their children and grandchildren to track game through the woods or wade into a cascading stream, they pass on our country's legacy of embracing our wild and scenic places.

As part of my Administration's America's Great Outdoors Initiative, we are partnering with States, tribal governments, and communities to advance local conservation priorities and increase access to land and water for the use and enjoyment of the American people. Since I took office, I have designated more than 2 million acres of Federal wilderness and thousands of miles of trails, protected over 1,000 miles of rivers, and established or expanded 12 National Monuments. These acts not only preserve our most treasured landscapes for posterity, but they also make more land available for outdoor recreational activities, including fishing and hunting. And we can do more—I continue to call on the Congress to fully and permanently fund the Land and Water Conservation Fund, a portion of which would further expand our public spaces.

Today, as we reflect on the formative experiences of hunting and fishing, let us renew our commitment to protecting these outdoor traditions and the vast American wild that sustains them.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 27, 2014, as National Hunting and Fishing Day. I call upon all Americans to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of September, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2014–23579
Filed 9–30–14; 11:15 am]
Billing code 3295–F5

Presidential Documents

Proclamation 9175 of September 26, 2014

National Public Lands Day, 2014

By the President of the United States of America

A Proclamation

From sandy beaches to snow-capped mountain tops, America's vast and varied landscapes stretch the breadth of our continent. These treasured spaces support outdoor recreation, serve as living classrooms and laboratories, and boost our local economies. Today, one-third of all our Nation's land is publicly owned—set aside for the use and enjoyment of every American. As we celebrate the expansive and magnificent beauty bequeathed to us by generations past, we recognize our profound obligation as caretakers of this natural bounty, and we rededicate ourselves to the important work of preserving and protecting our land and environment in our own time.

National Public Lands Day is the largest single-day volunteer effort for our country's public lands. On this day, Americans of all ages will help maintain and restore our Nation's outdoor resources and ecosystems at more than 2,200 sites across our country. Volunteers will remove trash from our beaches and clear debris from our hiking trails; from coast to coast, they will plant new trees, remove invasive species, and complete large and small projects to beautify and preserve our open spaces. This nationwide effort will help ensure these natural places are managed for future generations to enjoy, and it offers an opportunity for all Americans to give back to their favorite local park, beach, or outdoor retreat. In honor of this day of service, our National Parks and many of our federally managed lands will offer free admission.

My Administration is committed to making land stewardship and outdoor conservation a year-round effort. Through our America's Great Outdoors Initiative, we are empowering local communities to protect their own public spaces. We have also strengthened programs that connect all Americans with the outdoors and launched the 21st Century Conservation Service Corps, which will create more jobs preserving and restoring our Nation's lands and waters for young Americans and returning veterans.

This weekend, as we carry forward a legacy of conservation and stewardship, let us renew our commitment to protecting our environment and building a cleaner world. Together, we can ensure our children and grandchildren can enjoy the full splendor of our Nation's public and wild places.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 27, 2014, as National Public Lands Day. I encourage all Americans to participate in a day of public service for our lands.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of September, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2014–23580
Filed 9–30–14; 11:15 am]
Billing code 3295–F5

Presidential Documents

Proclamation 9176 of September 26, 2014

Gold Star Mother's and Family's Day, 2014

By the President of the United States of America

A Proclamation

For generations, mothers and families have given a piece of their heart to our Nation as their loved ones serve in our Armed Forces with honor and distinction. Seventy years ago, as Americans stormed an unforgiving beach, families waited anxiously for a call or a letter from an ocean away. And today, many families experience the absence of a deployed service member so future generations might know a more just and peaceful world. On Gold Star Mother's and Family's Day, we pay tribute to all those who made the ultimate sacrifice, and to the families who suffered the unimaginable pain of losing them so our Union might endure.

Hung in these families' front windows, blue-turned-gold stars remind us of their extraordinary loss and reflect not only the pride still in their eyes, but also the tears of pain that will never fully go away. Our Gold Star families hold dear to the values for which their loved ones gave their lives. With courage and resilience, they preserve the memories of the brave men and women we have lost by giving back to their communities and working toward a better future. As a Nation, we will always honor the sacrifice these families have made.

Our sacred obligation to our service members and their loved ones will never be forgotten. On this day and every day, we salute all those who have worn America's uniforms and the families who stand by them. Our homeland is stronger and safer because of these heroes. As we celebrate the memories of our troops who gave their last full measure of devotion, we renew our commitment to look after the loved ones they have left in our care.

The Congress, by Senate Joint Resolution 115 of June 23, 1936 (49 Stat. 1985 as amended), has designated the last Sunday in September as ''Gold Star Mother's Day.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 28, 2014, as Gold Star Mother's and Family's Day. I call upon all Government officials to display the flag of the United States over Government buildings on this special day. I also encourage the American people to display the flag and hold appropriate ceremonies as a public expression of our Nation's gratitude and respect for our Gold Star Mothers and Families.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of September, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2014–23584
Filed 9–30–14; 11:15 am]
Billing code 3295–F5

Reader Aids

Federal Register

Vol. 79, No. 190

Wednesday, October 1, 2014

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, 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.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

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, OCTOBER

59087–59422 1

CFR PARTS AFFECTED DURING OCTOBER

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.

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 September 24, 2014

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 2014

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Date of FR publication	15 days after publication	21 days after publication	30 days after publication	35 days after publication	45 days after publication	60 days after publication	90 days after publication
October 1	Oct 16	Oct 22	Oct 31	Nov 5	Nov 17	Dec 1	Dec 30
October 2	Oct 17	Oct 23	Nov 3	Nov 6	Nov 17	Dec 1	Dec 31
October 3	Oct 20	Oct 24	Nov 3	Nov 7	Nov 17	Dec 2	Jan 2
October 6	Oct 21	Oct 27	Nov 5	Nov 10	Nov 20	Dec 5	Jan 5
October 7	Oct 22	Oct 28	Nov 6	Nov 12	Nov 21	Dec 8	Jan 5
October 8	Oct 23	Oct 29	Nov 7	Nov 12	Nov 24	Dec 8	Jan 6
October 9	Oct 24	Oct 30	Nov 10	Nov 13	Nov 24	Dec 8	Jan 7
October 10	Oct 27	Oct 31	Nov 10	Nov 14	Nov 24	Dec 9	Jan 8
October 14	Oct 29	Nov 4	Nov 13	Nov 18	Nov 28	Dec 15	Jan 12
October 15	Oct 30	Nov 5	Nov 14	Nov 19	Dec 1	Dec 15	Jan 13
October 16	Oct 31	Nov 6	Nov 17	Nov 20	Dec 1	Dec 15	Jan 14
October 17	Nov 3	Nov 7	Nov 17	Nov 21	Dec 1	Dec 16	Jan 15
October 20	Nov 4	Nov 10	Nov 19	Nov 24	Dec 4	Dec 19	Jan 20
October 21	Nov 5	Nov 12	Nov 20	Nov 25	Dec 5	Dec 22	Jan 20
October 22	Nov 6	Nov 12	Nov 21	Nov 26	Dec 8	Dec 22	Jan 20
October 23	Nov 7	Nov 13	Nov 24	Nov 28	Dec 8	Dec 22	Jan 21
October 24	Nov 10	Nov 14	Nov 24	Nov 28	Dec 8	Dec 23	Jan 22
October 27	Nov 12	Nov 17	Nov 26	Dec 1	Dec 11	Dec 26	Jan 26
October 28	Nov 12	Nov 18	Nov 28	Dec 2	Dec 12	Dec 29	Jan 26
October 29	Nov 13	Nov 19	Nov 28	Dec 3	Dec 15	Dec 29	Jan 27
October 30	Nov 14	Nov 20	Dec 1	Dec 4	Dec 15	Dec 29	Jan 28
October 31	Nov 17	Nov 21	Dec 1	Dec 5	Dec 15	Dec 30	Jan 29