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Contents

Federal Register

Vol. 79, No. 192

Friday, October 3, 2014

Actuaries, Joint Board for Enrollment
See Joint Board for Enrollment of Actuaries

Agency for International Development
NOTICES
Senior Executive Service Performance Review Board Membership, 59739

Agriculture Department
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service
NOTICES
2014 Farm Bill Implementation Listening Session – Rural Community College Coordinated Strategy; Correction, 59739
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59739–59740

Army Department
See Engineers Corps

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Medicare & Medicaid Services
RULES
Medicare Programs:
Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System, etc.; Correction, 59675–59692
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59772–59774

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Reunification Procedures for Unaccompanied Alien Children, 59774–59775

Coast Guard
RULES
Safety Zones:
Navy Exercise, Delaware Bay and Atlantic Ocean, Cape May, NJ, 59650–59653
Tennessee River between Mile 4.8 to 5.8, Ledbetter, KY, 59648–59650
Three Rivers Towing Association Head of the Ohio Regatta, Allegheny River Mile 0.0 to 3.3, Pittsburgh, PA, 59647–59648
PROPOSED RULES
Safety Zones:
Chesapeake Bay, Cape Charles, VA, 59701–59703
NOTICES
Charter Renewals:
Cook Inlet Regional Citizens' Advisory Council; Recertification, 59783–59784

Commerce Department
See Economic Analysis Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions and Deletions, 59750–59751

Commodity Futures Trading Commission
PROPOSED RULES
Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 59898–59936

Consumer Product Safety Commission
RULES
Safety Standard for Magnet Sets, 59962–59989

Defense Department
See Engineers Corps
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59751–59752
Arms Sales, 59752–59758
Manual for Courts-Martial:
Proposed Amendments; Meetings, 59938–59959
Meetings:
Defense Business Board, 59758–59759

Economic Analysis Bureau
NOTICES
Meetings:
Bureau of Economic Analysis Advisory Committee, 59740

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Early Childhood Longitudinal Study Kindergarten Class of 2010–11 Spring Third-Grade National Collection, etc.; Correction, 59760
Health Education Assistance Loan Program: Lender's Application for Insurance Claim Form, etc., 59761
Progress in International Reading Literacy Study, etc., 59761–59762
Meetings:
National Advisory Council on Indian Education, 59762–59763

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Solicitations for Advanced Nuclear Energy Projects, 59763

Engineers Corps
NOTICES
Environmental Impact Statement; Availabilty:
U.S. Route 460, Prince George County to Suffolk, VA, 59759–59760

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Washington: General Regulations for Air Pollution Sources, 59653–59674
Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan:
Provisions for the 1997 Fine Particle (PM2.5) National Ambient Air Quality Standard and 2006 PM2.5 NAAQS; Correction, 59674–59675
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Maryland; Redesignation Request and Associated Maintenance Plan for the Baltimore Nonattainment Area for the 1997 Annual Fine Particulate Matter Standard, 59703–59717
NOTICES
Adequacy Determinations:
Colorado; Lamar and Steamboat Springs PM10 Maintenance Plans' Motor Vehicle Emissions Budgets for Transportation Conformity Purposes, 59767
Environmental Impact Statements; Availability, etc., 59767–59768
Guidance:
Applying Quantitative Data to Develop Data-Derived Extrapolation Factors for Interspecies and Intraspecies Extrapolation, 59768

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness Directives:
Airbus Airplanes, 59636–59639
Bombardier, Inc. Airplanes, 59630–59643
Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Airplanes, 59643–59645
The Boeing Company Airplanes, 59633–59635
Change of Controlling Agency for Restricted Areas:
California, 59645–59646
PROPOSED RULES
Airworthiness Directives:
Bell Helicopter Textron Canada Limited, 59695–59697
Kaman Aerospace Corporation (Kaman) Helicopters, 59697–59699

Federal Communications Commission
NOTICES
Dormant Proceedings; Terminations, 59769–59770
Panelist Information for Open Internet Roundtables, 59770

Federal Energy Regulatory Commission
NOTICES
Applications:
Pacific Gas and Electric Co., 59764–59765
Village of Lyndonville Electrical Department, 59764
Combined Filings, 59765–59767

Federal Railroad Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59891–59893

Federal Trade Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59771–59772

Fish and Wildlife Service
RULES
Endangered and Threatened Wildlife and Plants:
Western Distinct Population Segment of the Yellow-billed Cuckoo (Coccyzus americanus); Determination, 59992–60038
NOTICES
Endangered Species; Recovery Permit Applications, 59861

Food and Drug Administration
PROPOSED RULES
Food Additive Petitions:
Casa de Mesquite, LLC, 59699
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Electronic Records, Electronic Signatures, 59775–59776
Guidance:
Food and Drug Administration Notification and Medical Device Reporting for Laboratory Developed Tests, 59779–59782
Framework for Regulatory Oversight of Laboratory Developed Tests, 59776–59779
Meetings:
Anesthetic and Analgesic Drug Products Advisory Committee, 59783
Pulmonary-Allergy Drugs Advisory Committee, 59782–59783

Foreign-Trade Zones Board
NOTICES
Subzone Status; Approvals:
Southern Motion, Inc., Pontotoc and Baldwyn, MS, 59740

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See Inspector General Office, Health and Human Services Department
NOTICES
Meetings:
Secretary's Advisory Committee on Human Research Protections, 59772

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
RULES
Federal Housing Administration; Section 232 Healthcare Facility Insurance Program:
Submission of Operator Financial Reports in accordance with HUD's Uniform Financial Reporting Standards; Commencement of Compliance, 59646–59647
NOTICES
Federal Properties Suitable as Facilities to Assist the Homeless, 59784–59786

Final Fair Market Rents, Fiscal Year 2015:
Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program, 59786–59855
Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2015, 59855–59861

Inspector General Office, Health and Human Services Department

PROPOSED RULES
Medicare and State Health Care Programs:
Fraud and Abuse; Safe Harbors under the Anti-Kickback Statute, Civil Monetary Penalty Rules Regarding Beneficiary Inducements and Gainsharing; Revisions, 59717–59733

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam, 59740–59741

International Trade Commission
NOTICES
Meetings; Sunshine Act, 59862

Joint Board for Enrollment of Actuaries
NOTICES
Requests for Nominations:
Advisory Committee on Actuarial Examinations, 59862–59863

Labor Department
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Oil and Gase Lease Sales:
National Petroleum Reserve—Alaska, 59861–59862

Maritime Administration
NOTICES
Requests for Administrative Waivers of the Coastwise Trade Laws:
Vessel CIAO, 59893–59894

National Aeronautics and Space Administration
NOTICES
Meetings:
Aerospace Safety Advisory Panel, 59865–59866

National Credit Union Administration
RULES
Unfair or Deceptive Acts or Practices, 59627–59630

National Institute of Standards and Technology
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Summer High School Intern Program, 59741

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Establishing Transit Areas through Walrus Protection Areas at Round Island and Cape Peirce, Northern Bristol Bay, AK, 59733–59738
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 59745–59746
New England Fishery Management Council, 59742
Pacific Fishery Management Council, 59741–59742
Western Pacific Fishery Management Council, 59742–59745

National Park Service
NOTICES
Meetings:
Big Cypress National Preserve Off-Road Vehicle Advisory Committee; Cancellation, 59862

National Science Foundation
NOTICES
Meetings:
Advisory Committee for Education and Human Resources, 59866–59867
Advisory Committee for Social, Behavioral and Economic Sciences, 59866

National Telecommunications and Information Administration

NOTICES
Telecommunications Assessment of the Arctic Region, 59746–59750

Nuclear Regulatory Commission
RULES
List of Approved Spent Fuel Storage Casks:
Holtec International HI-STORM FLOOD/WIND System; Certificate of Compliance No. 1032, Amendment No. 1, 59623–59626
PROPOSED RULES
List of Approved Spent Fuel Storage Casks:
Holtec International HI-STORM FLOOD/WIND System; Certificate of Compliance No. 1032, Amendment No. 1, 59693–59695
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59867
Atomic Safety and Licensing Board Reconstitutions:
DTE Electric Co. (Fermi Nuclear Power Plant, Unit 2), 59867

Occupational Safety and Health Administration
NOTICES
Applications:
TUV SUD America, Inc.; Expansion of Recognition, 59863–59865
Meetings:
Advisory Committee on Construction Safety and Health; Charter Renewal, 59865

Postal Regulatory Commission
NOTICES
New Postal Products, 59867–59868

Presidential Documents

PROCLAMATIONS

Special Observances:
- National Arts and Humanities Month (Proc. 9177), 60043–60044
- National Breast Cancer Awareness Month (Proc. 9178), 60045–60046
- National Cybersecurity Awareness Month (Proc. 9179), 60047–60048
- National Disability Employment Awareness Month (Proc. 9180), 60049–60050
- National Domestic Violence Awareness Month (Proc. 9181), 60051–60052
- National Energy Action Month (Proc. 9182), 60053–60054
- National Substance Abuse Prevention Month (Proc. 9183), 60055–60056

ADMINISTRATIVE ORDERS

Foreign Assistance Act of 1961; Delegation of Authority (Memorandum of September 24, 2014), 60039–60041

Railroad Retirement Board

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59868–59869

Rural Business-Cooperative Service

NOTICES

2014 Farm Bill Implementation Listening Session – Rural Community College Coordinated Strategy; Correction, 59739

Rural Housing Service

NOTICES

2014 Farm Bill Implementation Listening Session – Rural Community College Coordinated Strategy; Correction, 59739

Rural Utilities Service

NOTICES

2014 Farm Bill Implementation Listening Session – Rural Community College Coordinated Strategy; Correction, 59739

Securities and Exchange Commission

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59869–59872

Applications for Deregistration, 59873–59874

Self-Regulatory Organizations; Proposed Rule Changes:
- Financial Industry Regulatory Authority, Inc., 59876–59889
- NASDAQ OMX PHLX LLC, 59874–59876

Suspension of Trading Orders:
- Nudg Media, Inc., 59889

State Department

NOTICES

Culturally Significant Objects Imported for Exhibition:
- Charles Ray: Sculpture, 1997–2014, 59890
- The Forever Now: Contemporary Painting in an Atemporal World, 59889
- V.S. Gaitonde: Painting as Process, Painting as Life, 59889–59890

Impositions of Sanctions under the Iran Sanctions Act and Iran Freedom and Counter-Proliferation Act, 59890–59891

Transportation Department

See Federal Aviation Administration

See Federal Railroad Administration

See Maritime Administration

Treasury Department

PROPOSED RULES

Privacy Act; Implementation, 59699–59701

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59894

Veterans Affairs Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
- Accelerated Payment Verification of Completion Letter, 59895
- Contract for Training and Employment, 59894

Separate Parts In This Issue

Part II

Commodity Futures Trading Commission, 59898–59936

Part III

Defense Department, 59938–59959

Part IV

Consumer Product Safety Commission, 59962–59989

Part V

Interior Department, Fish and Wildlife Service, 59992–60038

Part VI

Presidential Documents, 60039–60056

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

Proclamations:

9177.....60043
9178.....60045
9179.....60047
9180.....60049
9181.....60051
9182.....60053
9183.....60055

Administrative Orders:

Memorandums:
Memorandum of September 24, 2014.....60041

10 CFR

72.....59623

Proposed Rules:

72.....59693

12 CFR

701.....59627
706.....59627
790.....59627

14 CFR

39 (5 documents).....59630, 59633, 59636, 59640, 59643
73.....59645

Proposed Rules:

39 (2 documents).....59695, 59697

16 CFR

1240.....59962

17 CFR

Proposed Rules:

23.....59898
140.....59898

21 CFR

Proposed Rules:

179.....59699

24 CFR

5.....59646
232.....59646

31 CFR

Proposed Rules:

1.....59699

33 CFR

100.....59647
165 (2 documents).....59648, 59650

Proposed Rules:

165.....59701

40 CFR

52.....59653
81.....59674

Proposed Rules:

52.....59703
81.....59703

42 CFR

405.....59675
412.....59675
413.....59675
415.....59675
422.....59675
424.....59675
485.....59675
488.....59675

Proposed Rules:

1001.....59717
1003.....59717

50 CFR

17.....59992

Proposed Rules:

679.....59733

Rules and Regulations

Federal Register
Vol. 79, No. 192
Friday, October 3, 2014

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

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2014–0102]

RIN 3150–AJ40

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM FLOOD/WIND System; Certificate of Compliance No. 1032, Amendment No. 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the Holtec International HI–STORM FLOOD/WIND (FW) System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 1 to Certificate of Compliance (CoC) No. 1032. Amendment No. 1 adds a new heat load pattern for the multipurpose canister (MPC)–37, broadens the back pressure range for MPC–37 and MPC–89, and updates certain definitions related to fuel classification. Also, the amendment makes a correction to the expiration date of CoC No. 1032.

DATES: The direct final rule is effective December 17, 2014, unless significant adverse comments are received by November 3, 2014. If the direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Please refer to Docket ID NRC–2014–0102 when contacting the NRC about the availability of information for this direct final rule. You may access publicly-available information related to this direct final rule by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0102. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Naiem S. Tanious, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6103, email: *Naiem.Tanious@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Procedural Background
II. Background
III. Discussion of Changes
IV. Voluntary Consensus Standards
V. Agreement State Compatibility
VI. Plain Writing
VII. Environmental Assessment and Finding of No Significant Environmental Impact
VIII. Paperwork Reduction Act Statement
IX. Regulatory Flexibility Certification
X. Regulatory Analysis
XI. Backfitting and Issue Finality
XII. Congressional Review Act
XIII. Availability of Documents

I. Procedural Background

This direct final rule is limited to the changes contained in Amendment No. 1 to CoC No. 1032 and does not include other aspects of the Holtec International HI–STORM FW System design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on December 17, 2014. However, if the NRC receives significant adverse comments on this direct final rule by November 3, 2014, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the proposed rule section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or Technical Specifications (TSs).

For detailed instructions on filing comments, please see the companion proposed rule published in the Proposed Rule section of this issue of the **Federal Register**.

II. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that ''the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR) entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled, ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on June 8, 2011 (76 FR 33121), that approved the Holtec International HI–STORM FW System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1032.

III. Discussion of Changes

By letter dated October 13, 2011, and as supplemented on May 23, 2012, January 24, April 18, and July 23, 2013, Holtec International, Inc. (Holtec or the applicant) submitted an application to the NRC to amend CoC No. 1032. The amendment adds a new heat load pattern for the MPC–37, broadens the back pressure range for MPC–37 and MPC–89, and updates certain definitions related to fuel classification. Also, the amendment makes a correction to the expiration date of CoC No. 1032.

As documented in the safety evaluation report (SER), the NRC staff performed a detailed safety evaluation of the proposed CoC amendment request. There are no significant changes to cask design requirements in the proposed CoC amendment. Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. If there is no loss of containment, shielding, or criticality control, the environmental impacts would be insignificant. This amendment does not reflect a significant change in design or fabrication of the cask. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 1 would remain well within the 10 CFR part 20 limits. Therefore, the proposed CoC changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents.

This direct final rule revises the Holtec International HI–STORM FW System listing in 10 CFR 72.214 by adding Amendment No. 1 to CoC No. 1032. The amendment consists of the changes previously described, as set forth in the revised CoC and TSs. The revised TSs are identified in the SER.

The amended Holtec International HI–STORM FW System design, when used under the conditions specified in the CoC, the TSs, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under 10 CFR 72.210 may load spent nuclear fuel into the Holtec International HI–STORM FW System that meet the criteria of Amendment No. 1 to CoC No. 1032 under 10 CFR 72.212.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the Holtec International HI–STORM FW System design listed in 10 CFR 72.214. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this direct final rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

VI. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

VII. Environmental Assessment and Finding of No Significant Environmental Impact

A. The Action

The action is to amend 10 CFR 72.214 to revise the Holtec International HI–STORM FW System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 1 to CoC No. 1032. Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

B. The Need for the Action

This direct final rule amends the CoC for the Holtec International HI–STORM FW System design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Specifically, Amendment No. 1 adds a new heat load pattern for the multipurpose canister MPC–37, broadens the back pressure range for MPC–37 and MPC–89, and updates certain definitions related to fuel classification. Also, the amendment makes a correction to the expiration date of CoC No. 1032.

C. Environmental Impacts of the Action

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this Amendment No. 1 tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act.

The Holtec International HI–STORM FW System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an Independent Spent Fuel Storage Installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. If there is no loss of containment, shielding, or criticality control, the environmental impacts would be insignificant. This amendment does not reflect a significant change in design or fabrication of the cask. There are no significant changes to cask design requirements in the proposed CoC amendment. In addition, because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 1 would remain well within the 10 CFR part 20 limits. Therefore, the proposed CoC changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents. The staff documented its safety findings in the SER for this amendment.

D. Alternative to the Action

The alternative to this action is to deny approval of Amendment No. 1 and end the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into Holtec International HI–STORM FW System casks in accordance with the changes described in proposed Amendment No. 1 would have to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee. Therefore, the environmental impacts would be the same or less than the action.

E. Alternative Use of Resources

Approval of Amendment No. 1 to CoC No. 1032 would result in no irreversible commitments of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in 10 CFR part 51. Based on the foregoing environmental assessment, the NRC concludes that this direct final rule entitled, ''List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM FLOOD/WIND System; Certificate of Compliance No. 1032, Amendment No. 1,'' will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

VIII. Paperwork Reduction Act Statement

This direct final rule does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget (OMB), Approval Number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

IX. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and Holtec. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

X. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On June 8, 2011 (76 FR 33121), the NRC issued an amendment to 10 CFR part 72 that approved the Holtec International HI–STORM FW System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No.1032.

On October 13, 2011, and as supplemented on May 23, 2012, January 24, 2013, April 18, 2013, and July 23, 2013, Holtec submitted an application to amend the Holtec International HI–STORM FW System as described in Section III of this document.

The alternative to this action is to withhold approval of Amendment No. 1 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into the Holtec

International HI–STORM FW System under the changes described in Amendment No. 1 to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the SER and the environmental assessment, the direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and therefore, this action is recommended.

XI. Backfitting and Issue Finality

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule revises the CoC No. 1032 for the Holtec International HI–STORM FW System, as currently listed in 10 CFR 72.214, ''List of approved spent fuel storage casks.'' The revision consists of Amendment No. 1 which adds a new heat load pattern for the MPC–37, broadens the back pressure range for MPC–37 and MPC–89, and updates certain definitions related to fuel classification. Also the amendment makes a correction to the expiration date of CoC No. 1032.

Amendment No. 1 to CoC No. 1032 for the Holtec International HI–STORM FW System was initiated by Holtec and was not submitted in response to new NRC requirements, or an NRC request for amendment. Amendment No. 1 applies only to new casks fabricated and used under Amendment No. 1. These changes do not affect existing users of the Holtec International HI–STORM FW System, and the current Amendment continues to be effective for existing users. While current CoC users may comply with the new requirements in Amendment No. 1, this would be a voluntary decision on the part of current users. For these reasons, Amendment No. 1 to CoC No. 1032 does not constitute backfitting under 10 CFR 72.62, 10 CFR 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, no backfit analysis or additional documentation addressing the issue finality criteria in 10 CFR part 52 has been prepared by the staff.

XII. Congressional Review Act

This action is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

XIII. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No.
CoC No. 1032, Amendment No. 1.	ML14118A466.
Technical Specifications, Appendix A.	ML14118A468.
Technical Specifications, Appendix B.	ML14118A467.
Safety Evaluation Report ...	ML14118A469.
Application	ML11290A019.
Application Supplemental May 23, 2012.	ML12158A558.
Application Supplemental January 24, 2013.	ML13028A103.
Application Supplemental April 18, 2013.	ML13120A505.
Application Supplemental July 23, 2013.	ML13217A050.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2014–0102. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2014–0102); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2273, 2282, 2021); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 131, 132, 133, 135, 137, 141, 148 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 549 (2005).

Section 72.44(g) also issued under Nuclear Waste Policy Act secs. 142(b) and 148(c), (d) (42 U.S.C. 10162(b), 10168(c), (d)).

Section 72.46 also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154).

Section 72.96(d) also issued under Nuclear Waste Policy Act sec. 145(g) (42 U.S.C. 10165(g)).

Subpart J also issued under Nuclear Waste Policy Act secs. 117(a), 141(h) (42 U.S.C. 10137(a), 10161(h)).

Subpart K also issued under sec. 218(a) (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance No. 1032 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1032.

Initial Certificate Effective Date: June 13, 2011.

Amendment Number 1 Effective Date: December 17, 2014.

SAR Submitted by: Holtec International, Inc.

SAR Title: Final Safety Analysis Report for the HI–STORM FW System.

Docket Number: 72–1032.

Certificate Expiration Date: June 12, 2031.

Model Number: HI–STORM FW MPC–37, MPC–89.

Dated at Rockville, Maryland, this 18th day of September, 2014.

For the Nuclear Regulatory Commission.

Mark A. Satorius,

Executive Director for Operations.

[FR Doc. 2014–23633 Filed 10–2–14; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 706, and 790

RIN 3133–AE42

Unfair or Deceptive Acts or Practices; Technical Amendments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) repealed NCUA's rulemaking authority under the Federal Trade Commission Act (FTC Act). As a result, the NCUA Board (Board) is now repealing NCUA's regulations governing unfair or deceptive acts or practices. The Board is also making a number of technical amendments to other NCUA regulations to conform them to the agency's current central and field office structures. Additionally, the Board is amending NCUA's payday alternative loans regulation to replace all references to ''short-term, small amount loans'' and ''STS loans'' with corresponding references to ''payday alternative loans'' and ''PAL loans.'' The latter terms more accurately reflect the nature and purpose of this loan product.

DATES: This final rule is effective on October 3, 2014.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Associate General Counsel, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Final Rule
II. Regulatory Amendments
III. Regulatory Procedures

I. Background and Purpose of the Final Rule

Why is the NCUA Board issuing this rule?

Part 706

In 2010, President Obama signed into law the Dodd-Frank Act (Pub. L. 111–203, 124 Stat. 1376 (2010)). The Dodd-Frank Act substantially changed the federal legal framework with respect to consumer financial protection regulation. Among the many changes, section 1092 of the Dodd-Frank Act repealed NCUA's rulemaking authority under the FTC Act.[1] As a result, the Board is repealing NCUA's rules under part 706, titled ''Unfair or Deceptive Acts or Practices.''

Despite the repeal of part 706, NCUA still has supervisory and enforcement authority regarding unfair or deceptive acts or practices,[2] which could include the practices previously addressed in part 706. NCUA may determine that statutory violations exist if federal credit unions engage in acts or practices that are prohibited by the Dodd-Frank Act or the FTC Act. Such prohibited acts or practices may include, but are not limited to:

- Including confessions of judgment, waivers of exemptions, wage assignments, or security interests on household goods in consumer contracts;
- Misrepresenting the nature or extent of cosigner liability; and
- Pyramiding late fees.

Agency Structure

In November 2013, the Board approved a restructuring of NCUA's central office. This restructuring consisted of transferring certain functions from one office to another and establishing the Office of Continuity and Security Management (OCSM). OCSM performs all security-related functions that were formerly the responsibility of several different offices. The core functions of OCSM are national continuity programs, emergency management and physical security, personnel security, and intelligence and information security. As a result of this and other organizational changes described in section II, the Board is making a number of conforming technical amendments to NCUA's regulations.

Payday Alternative Loans

In September 2010, the Board amended its general lending regulation to enable federal credit unions (FCUs) to offer payday alternative loans (PAL loans).[3] PAL loans serve as a viable alternative to predatory payday loans and can help members break free of their dependency on high-cost predatory payday loans. The Board encourages FCUs to make PAL loans available for their members who need them, provided they are offered in a safe and sound manner. To be more readily understood, NCUA is amending the current terminology used to describe this type of loan. Specifically, § 701.21 currently refers to these loans as ''short-term, small amount loans'' or ''STS loans.'' The Board believes that replacing that terminology with ''payday alternative loans'' or ''PAL loans'' more accurately reflects the nature and purpose of this loan product. The updated terminology also is more consistent with the way NCUA and some industry stakeholders currently refer to this loan product. This important loan product deserves nomenclature that more precisely describes its function and is more readily understood.

II. Regulatory Amendments

1. Part 706—Unfair or Deceptive Acts or Practices

As discussed above, in response to changes made by the Dodd-Frank Act, this final rule repeals 12 CFR part 706.

2. Part 790—Changes to NCUA's Central and Field Office Structure

As discussed above, the Board is amending part 790 of NCUA's regulations to conform it to NCUA's current central and field office structures.

Office of Continuity and Security Management

The Office of Continuity and Security Management (OCSM), created in November 2013, began operating in January 2014. It was created to aggregate all of the agency's security-related functions into one office. The primary consolidated functions are continuity of operations planning, physical security, and personnel security. Also, NCUA put in place an additional security function to address national security issues affecting the financial services industry. All federal agencies are required to comply with various statutes and Executive Orders related to the safeguarding of national assets. Through OCSM, NCUA will be able to more efficiently respond to these federal mandates and conduct its security-related functions.

The final rule amends Part 790 to add a new paragraph describing OCSM and its functions.

Office of the Chief Financial Officer

The final rule amends the description of the Office of Chief Financial Officer to add strategic planning as one of its duties. NCUA shifted this duty from another office to better utilize staffing resources.

Office of Consumer Protection

The final rule amends the description of the Office of Consumer Protection (OCP) to reflect that the office now has four divisions. The Board added two divisions within OCP to more efficiently

[1] 15 U.S.C. 57a(f) as amended by the Dodd-Frank Act.

[2] NCUA has authority to enforce section 5 of the FTC Act (15 U.S.C. 45), and sections 1031 and 1036 of the Dodd-Frank Act (12 U.S.C. 5531 and 5536), under the Federal Credit Union Act. *See* 12 U.S.C. 1786(e) and 1786(k)(2).

[3] 75 FR 58285 (Sept. 24, 2010).

balance and structure the office's workload. In addition, NCUA deleted the duties of the Ombudsman from OCP's description. The Executive Director's office now supervises the Ombudsman.

Office of the Executive Director

The Board established the Ombudsman position in April 1995, as required by the Riegle Community Development and Regulatory Improvement Act of 1994. The Ombudsman operates as an objective third party to resolve disputes that cannot be resolved at the operational level. In 2013, the Board elevated the position of the Ombudsman to the Executive Director's office. It is supervised by the Executive Director's office and reports directly to the Board. Previously, OCP oversaw the Ombudsman's duties, and the Ombudsman reported to the Director of OCP.

Regional Offices

NCUA realigned its regional offices effective January 1, 2014. This was designed to create geographically compact districts that balance workload, improve efficiency, and reduce travel costs. In addition, the new regional structure coincides with other changes to strengthen NCUA's supervision, such as the creation of the Office of National Examinations and Supervision. Each NCUA region now has approximately an equal number of examiners, in addition to supervision, special actions, and support personnel.

The Board is updating the table in § 790.2(c)(1)(i), indicating the states that each region is responsible for supervising. Nine states have been transferred among the NCUA regional offices for the reasons noted above.[4] The changes are as follows:

- Wisconsin is in Region I;
- Ohio is in Region II;
- Arkansas and Louisiana are in Region III;
- Colorado, Montana, New Mexico, and Wyoming are in Region IV and
- California is in Region V.

Lastly, the territory of American Samoa is no longer listed in § 790.2(c)(1)(i) as NCUA no longer supervises any credit unions in that jurisdiction.

3. Part 701—Payday Alternative Loans

As discussed above, the Board is amending NCUA's payday alternative loans regulation to replace the terms ''short-term, small amount loans'' and ''STS loans'' with the terms ''payday alternative loans'' and ''PAL loans'' to more accurately reflect the nature and purpose of this loan product and to make it more readily understood.

III. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under $50 million in assets).[5] This final rule only makes non-substantive, technical changes. NCUA certifies that these technical amendments will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.[6] For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. NCUA has determined that the technical amendments in this final rule do not increase the paperwork requirements under PRA or regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This final rule 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. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[7]

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996[8] (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act (APA).[9] NCUA has submitted this rule to the Office of Management and Budget for it to determine if the final rule is a ''major rule'' for purposes of SBREFA. NCUA does not believe the rule is major.

Final Rule

Generally, the APA requires a federal agency to provide the public with notice and the opportunity to comment on agency rulemakings. The amendments in this rule are non-substantive and technical, or involve only matters relating to management and personnel and are exempt from APA notice and comment requirements.[10] They reflect changes to NCUA's organizational structure, remove duplicative and imprecise language, make minor changes updating cross citations, and make minor changes which are statutorily required by the Dodd-Frank Act. The APA permits an agency to forego the notice and comment period under certain circumstances, such as when a rulemaking is technical and non-substantive. NCUA finds that, in this instance, notice and public comment are unnecessary under section 553(b)(3)(B) of the APA.[11] NCUA also finds good cause to dispense with the 30-day delayed effective date requirement under section 553(d)(3) of the APA.[12] The rule, therefore, will be effective immediately upon publication.

List of Subjects

12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 706

Consumer protection, Credit, Credit unions, Deception, Intergovernmental relations, Trade practices, Unfairness.

12 CFR Part 790

Organization and functions (Government agencies).

[4] *http://www.ncua.gov/about/Leadership/Pages/field-program-offices.aspx.* This map shows the current regional alignment.

[5] 5 U.S.C. 603(a).

[6] 44 U.S.C. 3507(d); 5 CFR part 1320.

[7] Public Law 105–277, 112 Stat. 2681 (1998).

[8] Public Law 104–121, 110 Stat. 857 (1996).

[9] 5 U.S.C. 551.

[10] 5 U.S.C. 553(a)(2) and 553(b)(3)(B).

[11] 5 U.S.C. 553(b)(3)(B).

[12] 5 U.S.C. 553(d)(3).

By the National Credit Union Administration Board on September 18, 2014.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, the NCUA Board amends 12 CFR parts 701, 706, and 790 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.,* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

■ 2. Amend § 701.21(c)(7)(iii) as follows:

■ a. Remove the words ''Short-term, small amount'' wherever they appear and add, in their place, the words ''Payday alternative''.

■ b. Remove the words ''short-term, small amount'' wherever they appear and add, in their place, the words ''payday alternative''.

■ c. Remove the words ''an STS'' wherever they appear and add, in their place, the words ''a PAL''.

■ d. Remove the term ''STS'' wherever it appears and add, in its place, the term ''PAL''.

PART 706—[REMOVED]

■ 3. Under the authority of 12 U.S.C. 1751 *et seq.,* part 706 is removed and reserved.

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

■ 4. The authority citation for part 790 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789, 1795f.

■ 5. Amend § 790.2 by:

■ a. Revising paragraphs (b)(4), (b)(6), and (b)(15);

■ b. Adding paragraph (b)(17); and

■ c. Revising paragraph (c)(1)(i).

The revisions and addition read as follows:

§ 790.2 Central and field office organization.

* * * * *

(b) * * *

(4) *The Office of the Chief Financial Officer.* NCUA's Chief Financial Officer plans, organizes, implements, directs, and provides overall direction and leadership for:

(i) Agency-wide strategic planning, budget formulation, and performance reporting;

(ii) The agency's financial management system and financial reporting functions;

(iii) Procurement and facilities management to include various administrative responsibilities such as property management, mail services, graphics support, supply management, printing, and publications management; and

(iv) Managing the operations of the Operating and Insurance Funds, including payroll, travel policies, revenue assessment, and dividend distributions.

* * * * *

(6) *Office of the Executive Director.* The Executive Director reports to the entire NCUA Board. The Executive Director translates NCUA Board policy decisions into workable programs, delegates responsibility for these programs to appropriate staff members, and coordinates the activities of the senior executive staff, which includes: the General Counsel; the Regional Directors; and the Office Directors for Chief Financial Officer, Examination and Insurance, Human Resources, Chief Information Officer, and Public and Congressional Affairs. Because of the nature of the attorney/client relationship between the Board and General Counsel, the General Counsel may be directed by the Board not to disclose discussions and/or assignments with anyone, including the Executive Director. The Executive Director is otherwise to be privy to all matters within senior executive staff's responsibility. The Executive Director also serves as the agency's Director of Equal Employment Opportunity. The Office of the Executive Director also supervises the agency's ombudsman. The ombudsman investigates complaints and recommends solutions on regulatory issues that cannot be resolved at the regional level.

* * * * *

(15) *Office of Consumer Protection.* (i) The Office of Consumer Protection contains four divisions:

(A) The Division of Consumer Compliance Policy and Outreach;

(B) The Division of Consumer Affairs;

(C) The Division of Consumer Access; and

(D) The Division of Consumer Access-South.

(ii) The office provides consumer services, including consumer education and complaint resolution; establishes, consolidates, and coordinates consumer protections within the agency; acts as the central liaison on consumer protection with other federal agencies; and nationalizes field of membership processing and chartering activities.

* * * * *

(17) *The Office of Continuity and Security Management.* The Director of the Office of Continuity and Security Management is responsible for NCUA's emergency preparedness and for coordinating the response to natural disasters or national security events; for timely dissemination of information on cyber threats, terrorism, foreign criminal activity, and other national security threats to the agency or to the credit union sector; and for conducting risk assessments and managing executive branch programs to protect NCUA personnel and facilities, and to safeguard classified national security information.

(c) * * *

(1) *Regional Offices.* (i) The NCUA has five Regional Offices:

Region No.	Area within region	Office address
I	Connecticut, Maine, Massachusetts, Michigan, New Hampshire, New York, Rhode Island, Vermont, Wisconsin.	9 Washington Square, Washington Avenue Extension, Albany, NY 12205–5512.
II	Delaware, District of Columbia, Maryland, New Jersey, Ohio, Pennsylvania, Virginia, West Virginia.	1900 Duke St., Suite 300, Alexandria, VA 22314–3498.
III	Alabama, Arkansas, Florida, Georgia, Indiana, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virgin Islands.	7000 Central Parkway, Suite 1600, Atlanta, GA 30328–4598.
IV	Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wyoming.	4807 Spicewood Springs Road, Suite 5200, Austin, TX 78759–8490.

Region No.	Area within region	Office address
V	Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Utah, Washington.	1230 W. Washington Street, Suite 301, Tempe, AZ 85281.

* * * * *

[FR Doc. 2014–22715 Filed 10–2–14; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–1067; Directorate Identifier 2013–NM–164–AD; Amendment 39–17982; AD 2014–20–09]

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 DHC–8–400 series airplanes. This AD was prompted by reports of missing clamps that are required to provide positive separation between the alternating current (AC) feeder cables and the hydraulic line of the landing gear alternate extension. This AD requires an inspection for missing clamps that are required to provide positive separation between the AC feeder cables and the hydraulic line of the landing gear alternate extension, and related investigative and corrective actions if necessary. We are issuing this AD to detect and correct chafing of the AC feeder cable. A chafed and arcing AC feeder cable could puncture the adjacent hydraulic line, which, in combination with the use of the alternate extension system, could result in an in-flight fire.

DATES: This AD becomes effective November 7, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 7, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-1067* 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., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@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: Assata Dessaline, Aerospace Engineer, Avionics and Service Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7301; 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 DHC–8–400 series airplanes. The NPRM published in the **Federal Register** on December 30, 2013 (78 FR 79338).

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2013–16, dated June 14, 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:

> During production checks, it was found that the appropriate clamps required to provide positive separation between the AC feeder cables and the hydraulic line of the landing gear alternate extension were omitted. The AC feeder cable could sag and be in direct contact with the swage fitting of the landing gear alternate extension hydraulic line, resulting in chafing of the AC feeder cable. The chafed and arcing AC feeder cable could puncture the adjacent hydraulic line. In combination with the use of the alternate extension system, this could result in an in-flight fire.
>
> This [Canadian] AD mandates the [general visual] inspection [for missing clamps], and rectification [related investigative and corrective actions] as necessary, for proper clamp installation.

The related investigative action is a general visual inspection of the AC power feeder cables and the hydraulic line for damage due to chafing. The corrective actions include repair of chafed parts, and replacement of missing clamps. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-1067-0002.*

Comment

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. The following presents the comment received on the NPRM (78 FR 79338, December 30, 2013) and the FAA's response to the comment.

Request To Remove Certain Service Information Procedures

Horizon Air requested that we change the language in paragraph (g) of the NPRM (78 FR 79338, December 30, 2013) from mandating the Accomplishment Instructions in Bombardier Service Bulletin 84–24–53, Revision A, dated May 16, 2013, to mandating only the section of Bombardier Service Bulletin 84–24–53, Revision A, dated May 16, 2013, that corrects the unsafe condition. Horizon Air stated that the Accomplishment Instructions, Part A, ''Job Set-up,'' and Part C, ''Close Out,'' have nothing to do with correcting the unsafe condition. Horizon Air expressed that mandating operators to perform these sections adds an unnecessary regulatory requirement because operators must have the airplane in a specific condition, and keep it in that condition, while performing the corrective action. Horizon Air also stated that, if the FAA keeps the requirements of job setup and job close-out, it forces an operator to request an alternative method of compliance (AMOC) if it chooses to deviate from the work-steps. Horizon Air provided its cost estimate of obtaining an AMOC.

In this case, we agree with the commenter's request to exclude the ''Job Set-up'' and ''Close Out'' sections of Bombardier Service Bulletin 84–24–53, Revision A, dated May 16, 2013. We have revised paragraph (g) of this AD to require accomplishment of paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–24–53, Revision A, dated May 16, 2013.

''Contacting the Manufacturer'' Paragraph in This AD

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

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

In the NPRM (78 FR 79338, December 30, 2013), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to this FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

No comments were provided to the NPRM (78 FR 79338, December 30, 2013) about these proposed changes. However, a comment was provided for another NPRM, Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013), in which the commenter stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

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

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed that paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the FAA, TCCA, or Bombardier's TCCA Design Approval Organization (DAO). Where necessary throughout this AD, we also replaced any reference to approvals of corrective actions with a reference to the Contacting the Manufacturer paragraph.

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.

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

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

Conclusion

We reviewed the relevant data, considered the comment 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 79338, December 30, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 79338, December 30, 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 78 airplanes of U.S. registry.

We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $13,260, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 2 work-hours and require parts costing $11, for a cost of $181 per product. We have received no definitive data that would enable us to provide cost estimates for the on-condition repair of the AC power feeder cables and hydraulic lines specified in this AD. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify 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-2013-1067;* 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):

2014–20–09 Bombardier, Inc.: Amendment 39–17982. Docket No. FAA–2013–1067; Directorate Identifier 2013–NM–164–AD.

(a) Effective Date

This AD becomes effective November 7, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001 through 4347 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical power.

(e) Reason

This AD was prompted by reports of missing clamps that are required to provide positive separation between the alternating current (AC) feeder cables and the hydraulic line of the landing gear alternate extension. We are issuing this AD to detect and correct chafing of the AC feeder cable. A chafed and arcing AC feeder cable could puncture the adjacent hydraulic line, which, in combination with the use of the alternate extension system, could result in an in-flight fire.

(f) Compliance

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

(g) Clamp Inspection, Related Investigative Actions, and Corrective Actions

Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs earlier: Do a general visual inspection for installation of clamps between the AC feeder cables and hydraulic line; and do all applicable related investigative and corrective actions; in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–24–53, Revision A, dated May 16, 2013. Do all applicable related investigative and corrective actions before further flight.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–24–53, dated May 11, 2012.

(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

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–16, dated June 14, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-1067-0002.*

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

(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 Service Bulletin 84–24–53, Revision A, dated May 16, 2013.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@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 23, 2014.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–23429 Filed 10–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0283; Directorate Identifier 2012–NM–183–AD; Amendment 39–17980; AD 2014–20–07]

RIN 2120–AA64

Airworthiness Directives; the Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2010–03–05 for all the Boeing Company Model 747–200C and –200F series airplanes. AD 2010–03–05 required, for the upper chords of the upper deck floor beam of section 41, an inspection for cracking of certain fastener holes, and corrective action if necessary; and repetitive replacements of the upper chords, straps (or angles), and radius fillers of certain upper deck floor beams and, for any replacement that is done, inspections for cracking, and corrective actions if necessary. This new AD adds repetitive inspections of the upper chords of the upper deck floor beam of Section 42, repetitive replacements of the upper chords, post-replacement inspections, and corrective actions if necessary. This new AD also adds post-replacement inspections for section 41 and reduces certain compliance times. This AD was prompted by a determination that the upper deck floor beams are subject to widespread fatigue damage (WFD), the existing inspection program is not sufficient to maintain an acceptable level of safety, and the upper chords of the upper deck floor beam of section 42 are subject to the unsafe condition. We are issuing this AD to detect and correct cracking of the upper chords and straps (or angles) of the floor beams, which could lead to failure of the floor beams and consequent loss of controllability, rapid decompression, and loss of structural integrity of the airplane.

DATES: This AD is effective November 7, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 7, 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–2014–0283; 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: Roger Caldwell, Aerospace Engineer, Technical Operations Center, ANM–100D, FAA, Denver Aircraft Certification Office (ACO), 26805 East 68th Avenue, Room 214, Denver, CO 80249; phone: 303–342–1086; fax: 303–342–1088; email: *roger.caldwell@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2010–03–05, Amendment 39–16188 (75 FR 5692, February 4, 2010). AD 2010–03–05 applied to all The Boeing Company Model 747–200C and –200F series airplanes. The NPRM published in the **Federal Register** on May 28, 2014 (79 FR 30486). The NPRM was prompted by a determination that the upper deck floor beams are subject to WFD, the existing inspection program is not sufficient to maintain an acceptable level of safety, and the upper chords of the upper deck floor beams in section 42 are subject to the identified unsafe condition. The NPRM proposed to add post-replacement inspections for section 41 and reduce certain compliance times. The NPRM also proposed to add repetitive inspections of the upper chords of the upper deck floor beams in section 42, repetitive replacements of the upper chords, post-replacement inspections, and corrective action if necessary. We are issuing this AD to detect and correct cracking of the upper chords and straps (or angles) of the floor beams, which could lead to failure of the floor beams and consequent loss of controllability, rapid decompression, and loss of structural integrity of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. Boeing stated that it concurs with the contents of the NPRM (79 FR 30486, May 28, 2014).

Conclusion

We reviewed the relevant data, considered the comment 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 NPRM (79 FR 30486, May 28, 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 30486, May 28, 2014).

Costs of Compliance

We estimate that this AD affects 25 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
Retained inspection and replacement (AD 2010–03–05, Amendment 39-16188 (75 FR 5692, February 4, 2010)).	663 work-hours × $85 per hour = $56,355.	$0	$56,355 per inspection/replacement cycle.	$1,408,875 per inspection/replacement cycle.
New post-replacement inspections—section 41.	Up to 525 work-hours × $85 per hour = $44,625 [1].	$0	$44,625	Up to $1,115,625.
New inspections, replacement, and post-replacement inspections—section 42.	Up to 525 work-hours × $85 per hour = $44,625 [1].	Manufacturer has not provided cost of parts.	$44,625	Up to $1,115,625.

[1] Includes time to manufacture parts.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2010–03–05, Amendment 39–16188 (75 FR 5692, February 4, 2010), and adding the following new AD:

2014–20–07 The Boeing Company: Amendment 39–17980; Docket No. FAA–2014–0283; Directorate Identifier 2012–NM–183–AD.

(a) Effective Date

This AD is effective November 7, 2014.

(b) Affected ADs

This AD replaces AD 2010–03–05, Amendment 39–16188 (75 FR 5692, February 4, 2010).

(c) Applicability

This AD applies to all The Boeing Company Model 747–200C and –200F series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a determination that the upper deck floor beams are subject to widespread fatigue damage (WFD), the existing inspection program is not sufficient to maintain an acceptable level of safety, and upper chords of the upper deck floor beam of section 42 are subject to the unsafe condition. We are issuing this AD to detect and correct cracking of the upper chords and straps (or angles) of the floor beams, which could lead to failure of the floor beams and consequent loss of controllability, rapid decompression, and loss of structural integrity of the airplane.

(f) Compliance

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

(g) Inspection and Replacement for the Upper Chords of the Upper Deck Floor Beam of Section 41

At the applicable time specified in Table 1 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2696, Revision 1, dated April 12, 2012: At stations (STA) 340 through STA 440, STA 500, and STA 520, do an open-hole high frequency eddy current (HFEC) inspection at all accessed fastener holes to detect cracking; and install new upper deck floor beam upper chords, straps, angles, and radius fillers; in accordance with Part 2 and Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2696, Revision 1, dated April 12, 2012.

(h) Post-Replacement Inspections and Replacements for the Upper Chords of the Upper Deck Floor Beam of Section 41

At the applicable time specified in Table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2696, Revision 1, dated April 12, 2012; or within 1,500 flight cycles after March 11, 2010 (the effective date of AD 2010–03–05, Amendment 39–16188 (75 FR 5692, February 4, 2010)); whichever occurs later: Do detailed and HFEC inspections to detect cracking of the replaced upper deck floor beam chords, the floor panel attachment holes, and the permanent fastener locations of the replaced upper deck floor beam chords, in accordance

with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2696, Revision 1, dated April 12, 2012. If no cracking is found, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Do the detailed and HFEC inspections of the replaced upper deck floor beam chords within 3,000 flight cycles after the most recent inspection, or within 300 flight cycles after the effective date of this AD, whichever occurs later, and repeat thereafter at the applicable time specified in Table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2696, Revision 1, dated April 12, 2012.

(2) Do the open-hole HFEC inspection and chord replacement required by paragraph (g) of this AD at the applicable time specified in Table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2696, Revision 1, dated April 12, 2012, or within 240 flight cycles after the effective date of this AD, whichever occurs later. Repeat the inspections and replacement specified in paragraph (h) of this AD at the applicable time specified in Table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2696, Revision 1, dated April 12, 2012.

(i) Inspection and Replacement for the Upper Chords of the Upper Deck Floor Beam of Section 42

At the applicable time specified in Tables 3 and 4 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2696, Revision 1, dated April 12, 2012, except as required by paragraph (l) of this AD: Do the actions specified in paragraph (i)(1) or (i)(2) of this AD as applicable.

(1) At STA 540 through STA 740 for Group 1 airplanes identified in Boeing Alert Service Bulletin 747–53A2696, Revision 1, dated April 12, 2012: Do an open-hole HFEC inspection to detect cracking, and install new upper deck floor beam upper chord replacements, in accordance with Part 7 and Part 8 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2696, Revision 1, dated April 12, 2012.

(2) At STA 540 through STA 780 for Group 2 airplanes identified in Boeing Alert Service Bulletin 747–53A2696, Revision 1, dated April 12, 2012: Do an open-hole HFEC inspection to detect cracking, and install new upper deck floor beam upper chord replacements, in accordance with Part 7 and Part 8 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2696, Revision 1, dated April 12, 2012.

(j) Post-Replacement Inspections and Replacement for the Upper Chords of the Upper Deck Floor Beam of Section 42

At the applicable time specified in Table 5 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2696, Revision 1, dated April 12, 2012; or within 1,500 flight cycles after March 11, 2010 (the effective date of AD 2010–03–05, Amendment 39–16188 (75 FR 5692, February 4, 2010)); whichever occurs later: Do HFEC inspections to detect cracking of the replaced upper deck floor beam chords, in accordance with Part 9 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2696, Revision 1, dated April 12, 2012. If no crack is found, do the actions specified in paragraphs (j)(1) and (j)(2) of this AD.

(1) Repeat the HFEC inspections of the replaced upper deck floor beam chords thereafter at the applicable time specified Table 5 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2696, Revision 1, dated April 12, 2012.

(2) Do the open-hole HFEC inspection and chord replacement required by paragraph (i) of this AD at the applicable time specified in Table 5 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2696, Revision 1, dated April 12, 2012. Repeat the inspections and replacement, as specified in paragraph (j) of this AD, at the applicable time specified in Table 5 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2696, Revision 1, dated April 12, 2012.

(k) Corrective Actions

If any cracking is found during any inspection required by this AD, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (o) of this AD.

(l) Exception to Service Information Specifications

Where Boeing Alert Service Bulletin 747–53A2696, Revision 1, dated April 12, 2012, specifies a compliance time ''after the revision 1 date on this service bulletin,'' this AD requires compliance within the specified compliance time ''after the effective date of this AD.''

(m) Credit for Previous Actions

This paragraph provides credit for the installation of floor beam replacements required by this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 747–53A2696, dated October 16, 2008. (This service bulletin was incorporated by reference in AD 2010–03–05, Amendment 39–16188 (75 FR 5692, February 4, 2010)).

(n) Special Flight Permit

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

(o) 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 persons identified in paragraph (p)(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.

(p) Related Information

(1) For more information about this AD, contact Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *nathan.p.weigand@faa.gov.*

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

(q) 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 Alert Service Bulletin 747–53A2696, Revision 1, dated April 12, 2012.

(ii) Reserved.

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

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

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

Issued in Renton, Washington, on September 20, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–23377 Filed 10–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0058; Directorate Identifier 2013–NM–116–AD; Amendment 39–17977; AD 2014–20–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 94–12–03 for certain Airbus Model A320 series airplanes. AD 94–12–03 required modification of the belly fairing structure. This new AD requires repetitive inspections for cracking of the four titanium angles between the belly fairing and the keel beam side panel, an inspection for cracking of the open holes if any cracking is found in the titanium angles, and repair or replacement if necessary; this new AD also expands the applicability of AD 94–12–03. This AD was prompted by reports of cracks at the lower riveting of the four titanium angles that connect the belly fairing to the keel beam side panels on both sides of the fuselage. We are issuing this AD to detect and correct cracking of the titanium angles that connect the belly fairing to the keel beam side panels on both sides of the fuselage, which could affect the structural integrity of the airplane.

DATES: This AD becomes effective November 7, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 7, 2014.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of January 10, 1994 (59 FR 64875, December 10, 1993).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0058;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 94–12–03, Amendment 39–8930 (59 FR 28763, June 3, 1994). AD 94–12–03 applied to Model A320 series airplanes having serial numbers (S/Ns) 003 through 092 inclusive. These serial numbers apply to Model A320–111, –211, and –231 series airplanes. The NPRM published in the **Federal Register** on February 26, 2014 (79 FR 10707).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0122, dated June 5, 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:

> During the fatigue test campaign of the A320 family type design, cracks have been found at the lower riveting of the four titanium angles which connect the belly fairing to the keel beam side panels between frames FR40 and FR42, on both sides of the fuselage.
>
> This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.
>
> In 1992, [Direction Générale de l'Aviation Civile] DGAC France issued AD 92–201–030 (*http://ad.easa.europa.eu/blob/19922010tb_superseded.pdf/AD_F-1992-201-030_1*) (which corresponds to FAA AD 94–12–03, Amendment 39–8930 (59 FR 28763, June 3, 1994)) to require reinforcement of the belly fairing structure, which addressed part of the unsafe condition.
>
> For the reason described above, this [EASA] AD retains the requirements of DGAC France AD 92–201–030, which is superseded, and requires repetitive detailed inspections [for cracking] of the affected titanium angles and, depending on findings, repair or replacement of parts.

As an option to extend the repetitive inspection interval, after the first detailed inspection is accomplished and on condition of no crack findings, this AD allows operators to remove the four titanium angles, perform a rototest for cracking on the open holes and, provided no cracks are found on the open holes, install new titanium angles, followed by post-modification detailed inspections of the new titanium angles.

For any titanium angle crack findings, this AD requires removing any cracked angle, performing a rototest for cracking on the open holes and, provided no cracks are found, installing a new titanium angle, followed by detailed inspections of the new titanium angles.

For any open hole cracking found during any rototest required by this AD, this AD requires repairing any cracking 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).

This AD expands the applicability of AD 94–12–03, Amendment 39–8930 (59 FR 28763, June 3, 1994), to include all Airbus Model A318, A319, A320, and A321 series airplanes.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0058-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 10707, February 26, 2014) and the FAA's response to each comment.

Request To Extend Proposed Compliance Time for Inspection of Titanium Angles

Delta Airlines (DAL) requested that we extend the compliance time for the inspection of the titanium angles specified in paragraph (h)(3) of the proposed AD (79 FR 10707, February 26, 2014). DAL stated that extending this compliance time from 3,000 flight cycles or 6,000 flight hours after the effective date of this AD, whichever occurs first, to 5,000 flight cycles or 10,000 flight hours, whichever occurs first, would match the repetitive interval for the detailed inspection on those airplanes that have not had the modification accomplished, and it would give DAL and other operators the opportunity to schedule these inspections in a hangar environment.

We do not agree with the commenter's request to extend the compliance time specified in paragraph (h)(3) of this AD. DAL has not provided data to

substantiate that extending this compliance time would provide an acceptable level of safety. This compliance time was developed after analyzing risk to the fleet, availability of in-service information and feasibility of performing inspection. We consider the overall risk to the fleet, including the severity of the failure and the likelihood of the failure's occurrence, to calculate appropriate compliance times. However, under the provisions of paragraph (o)(1) of this AD, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the extension would provide an acceptable level of safety. We have not changed this final rule in this regard.

Request To Allow Special Flight Permit When Cracking Is Found

DAL requested that we add a provision in the NPRM (79 FR 10707, February 26, 2014) to allow operators to ferry airplanes with cracking found during the inspection specified in paragraph (h) of this AD. DAL stated that a ferry flight would allow an airplane to be moved to a more suitable location for maintenance in the event damage is found. DAL also stated that the ferry flight is necessary due to the extensive level of access and disassembly.

We agree with the intent behind the commenter's request, but find it unnecessary to include a special flight provision in this AD. Special flight permits are currently allowed under Section 39.23 of the Federal Aviation Regulations (14 CFR 39.23), unless specifically prohibited or limited by an AD. No change is necessary to this final rule in this regard.

''Contacting the Manufacturer'' Paragraph in This AD

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

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

In the NPRM (79 FR 10707, February 26, 2014), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to this FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

No comments were provided to the NPRM (79 FR 10707, February 26, 2014) about these proposed changes. However, a comment was provided for an NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013). The commenter stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

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

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed 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, the European Aviation Safety Agency (EASA), or Airbus's EASA Design Organization Approval (DOA).

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

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

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

Based on these comments, we removed the requirement that the DAH-provided repair specifically refer to this AD. Before adopting such a requirement, the FAA will coordinate with affected DAHs and verify they are prepared to implement means to ensure that their repair approvals consider the unsafe condition addressed in this AD. Any such requirements will be adopted through the normal AD rulemaking process, including notice-and-comment procedures, when appropriate.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''DAH with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH throughout this AD.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting this final rule 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 10707, February 26, 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 10707, February 26, 2014).

Costs of Compliance

We estimate that this AD affects 851 airplanes of U.S. registry.

The actions that were required by AD 94–12–03, Amendment 39–8930 (59 FR 28763, June 3, 1994), and retained in this AD take about 288 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $1,045 per product. Based on these figures, the estimated cost of the actions that were required by AD 94–12–03 is $25,525 per product.

We also estimate that it will take about 7 work-hours per product to comply with the basic new requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $506,345, or $595 per product.

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

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-2014-0058;* 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 removing Airworthiness Directive (AD) 94–12–03, Amendment 39–8930 (59 FR 28763, June 3, 1994), and adding the following new AD:

2014–20–04 Airbus: Amendment 39–17977. Docket No. FAA–2014–0058; Directorate Identifier 2013–NM–116–AD.

(a) Effective Date

This AD becomes effective November 7, 2014

(b) Affected ADs

This AD replaces AD 94–12–03, Amendment 39–8930 (59 FR 28763, June 3, 1994).

(c) Applicability

This AD applies to the Airbus airplanes specified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus Model A318–111, –112, –121, and –122 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Airbus Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes.

(4) 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 at the lower riveting of the four titanium angles that connect the belly fairing to the keel beam side panels on both sides of the fuselage. We are issuing this AD to detect and correct cracking of the titanium angles that connect the belly fairing to the keel beam side panels on both sides of the fuselage, which could affect the structural integrity of the airplane.

(f) Compliance

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

(g) Retained Modification

This paragraph restates the requirements of paragraph (a) of AD 94–12–03, Amendment 39–8930 (59 FR 28763, June 3, 1994), with new service information. For Model A320–111, –211, and –231 series airplanes, manufacturer serial numbers 003 through 092 inclusive: Prior to the accumulation of 12,000 total landings on the airplane, or within 300 days after January 10, 1994 (the effective date of AD 93–24–11, Amendment 39–8760 (58 FR 64875, December 10, 1993)), whichever occurs later, modify the belly fairing structure, in accordance with the Accomplishment Instructions of an Airbus service bulletin specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD. As of the effective date of this AD, use only the Airbus service bulletin specified in paragraph (g)(3) of this AD.

(1) Airbus Industrie Service Bulletin A320–53–1014, dated June 25, 1992.

(2) Airbus Industrie Service Bulletin A320–53–1014, Revision 1, dated May 26, 1993.

(3) Airbus Service Bulletin A320–53–1014, Revision 2, dated September 1, 1994.

(h) New Requirement of This AD: Repetitive Inspection

At the latest of the compliance times specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD: Do a detailed inspection for cracking of the four titanium angles between the belly fairing and the keel beam side panel, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1259, dated November 6, 2012.

(1) Before the accumulation of 30,000 total flight cycles or 60,000 total flight hours, whichever occurs first after first flight of the airplane.

(2) Within 30,000 flight cycles or 60,000 flight hours, whichever occurs first after modification of the airplane as required by paragraph (g) of this AD, or after installation of new titanium angles, provided that, prior to installation, a rototest for cracking on the open holes has been accomplished with no crack findings, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1259, dated November 6, 2012.

(3) Within 3,000 flight cycles or 6,000 flight hours, whichever occurs first after the effective date of this AD.

(i) New Requirement of This AD: Post-Inspection Actions for No Crack Findings

If, during any inspection required by paragraph (h) of this AD, there is no crack finding: Accomplish the actions specified in either paragraph (i)(1) or (i)(2) of this AD.

(1) Repeat the inspection required by paragraph (h) of this AD at intervals not to exceed 5,000 flight cycles or 10,000 flight hours, whichever occurs first

(2) Before further flight after the inspection required by paragraph (h) of this AD, remove all inspected titanium angles, accomplish a rototest for cracking on the open holes and, provided no cracks are found, install new titanium angles, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1259, dated November 6, 2012.

(j) New Requirement of This AD: Post-Inspection Actions for Any Crack Findings

If, during any inspection required by paragraph (h) of this AD, there is any crack finding: Before further flight, remove the affected titanium angle(s), accomplish a rototest for cracking on the open holes, and, provided no cracks are found, install new titanium angles, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1259, dated November 6, 2012.

(k) New Requirement of This AD: Post-Installation Repetitive Inspections

For airplanes on which new titanium angles were installed as specified in paragraph (i)(2) or (j) of this AD: Within 30,000 flight cycles or 60,000 flight hours, whichever occurs first after the installation, accomplish a detailed inspection for cracking of the four titanium angles between the belly fairing and the keel beam side panel, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1259, dated November 6, 2012. Repeat the inspection thereafter at intervals not to exceed 5,000 flight cycles or 10,000 flight hours, whichever occurs first.

(l) New Requirement of This AD: Post Inspection Actions for Any Crack Findings During Post-Installation Inspections

If, during any inspection as required by paragraph (k) of this AD, there is any crack finding: Before further flight, remove the affected titanium angles, accomplish a rototest for cracking on the open holes, and, provided no cracks are found, install new titanium angles, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1259, dated November 6, 2012.

(m) New Requirement of This AD: Corrective Action for Rototest Crack Finding

If, during any rototest as required by paragraph (i), (j), or (l) of this AD, any crack is found: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(n) New Provision of This AD: No Termination Action for Repetitive Inspections

Repair or replacement of parts as specified in this AD does not terminate the repetitive inspections required by this AD.

(o) 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.

(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.

(p) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency, Airworthiness Directive 2013–0122, dated June 5, 2013, for related information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0058-0002.*

(q) 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.

(3) The following service information was approved for IBR on November 7, 2014.

(i) Airbus Service Bulletin A320–53–1014, Revision 2, dated September 1, 1994, including supplementary page 7A. Pages 1–3, 15, 19, 20, and 25 of this document are identified as Revision 2, dated September 1, 1994; pages 4–8, 10, 12, 16–18, and 21–24 are identified as Revision 1, dated May 26, 1993; and pages 9, 11, 13, 14, and 26 are identified as the original, dated June 25, 1992.

(ii) Airbus Service Bulletin A320–53–1259, dated November 6, 2012.

(4) The following service information was approved for IBR on January 10, 1994 (59 FR 64875, December 10, 1993).

(i) Airbus Industrie Service Bulletin A320–53–1014, dated June 25, 1992.

(ii) Airbus Industrie Service Bulletin A320–53–1014, Revision 1, dated May 26, 1993.

(5) 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.*

(6) 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.

(7) 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. 2014–23139 Filed 10–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0650; Directorate Identifier 2014–NM–162–AD; Amendment 39–17974; AD 2014–20–01]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes. This AD requires repetitive inspections for any fuel leak in the right-hand landing lights compartment, and related investigative and corrective actions if necessary. This AD also provides for an optional replacement of the connector of the fuel boost pump canister of the auxiliary power unit (APU), which terminates the repetitive inspections. This AD was prompted by a report of fuel leaks in the connector cavity of the APU fuel boost pump canister and at the electrical conduit connection of the APU fuel boost pump in the right-hand landing lights compartment. We are issuing this AD to detect and correct fuel leaks in the right-hand landing lights compartment, which, in combination with the heat generated by the taxi lights and landing lights on the ground reaching the auto-ignition temperature of the fuel, could result in ignition of any fuel or fumes present in the right-hand landing lights compartment.

DATES: This AD becomes effective October 20, 2014.

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

We must receive comments on this 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 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*. 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–2014–0650; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the 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: Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7301; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2014–21, dated July 10, 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–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes. The MCAI states:

> Bombardier Inc. has discovered fuel leakage in the auxiliary power unit (APU) fuel Boost Pump (BP) canister connector cavity. On some of those aeroplanes, leakage was also noticed at the APU fuel BP electrical conduit connection in the right hand landing light compartment. The root cause of the subject fuel leak is identified to be the improper length of the female connector keyway located in the fuel BP canister, causing a shift of the electrical harness and its seals.
>
> Available data indicates that on a hot day, due to the heat generated by the taxi light and/or landing lights on the ground, temperature in the landing light compartment can reach the fuel auto ignition temperature. Therefore, presence of any fuel in the right hand landing light compartment is considered to be a safety hazard [fuel or fumes present in the right-hand landing lights compartment might ignite] that warrants mitigating action.
>
> In order to help mitigate the potential safety hazard precipitated by any fuel leakage in the right hand landing light compartment, Bombardier Inc., has revised the Aircraft Flight Manual (AFM) through Temporary Revisions (TRs) 604/38 and 605/20 dated 16 June 2014 to restrict the operation of Taxi and Landing lights on the ground. Transport Canada issued Emergency [Canadian] AD CF–2014–17 [(*http://wwwapps3.tc.gc.ca/Saf-Sec-Sur/2/cawis-swimn/attachment.asp?aiid=CF-2014-17&revid=0&cntr=CF&file=CFCF-2014-17.pdf&type=PDE*), which corresponds to FAA AD 2014–15–17, Amendment 39–17919 (79 FR 44268, July 31, 2014)] to mandate incorporation of the above AFM TRs.
>
> To address the root cause of the subject fuel leakage from the APU fuel boost pump canister wiring conduit, Bombardier Inc. issued Alert Service Bulletin (ASB) A605–28–008 that requires periodic [repetitive general visual] inspection[s] for fuel leaks and [applicable related investigative and corrective actions and] eventual the replacement of the discrepant fuel BP canister connectors [including related investigative and corrective actions] on affected aeroplanes. The ASB has been revised to include an additional inspection of the new connector wiring for damage and this [Canadian] AD is issued to mandate the compliance with ASB A605–28–008 Revision 2 requirements.

Related investigative actions include doing a general visual inspection for any fuel leak in the wiring conduit of the APU fuel boost pump in the right-hand landing lights compartment; a detailed inspection for damage of the O-rings of the fuel pump cartridge; and a detailed inspection of the wires under the wiring insulation sleeve of the new connector for cuts. Corrective actions include installing new packings on the APU fuel pump cartridge, replacing the connector on the APU fuel pump canister, and replacing wiring and O-rings if certain conditions are found. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0650.

Relevant Service Information

Bombardier, Inc. has issued Bombardier Alert Service Bulletin A605–28–008, Revision 02, dated July 9, 2014. The actions described in this service information are intended to

correct the unsafe condition identified in the MCAI.

Other Relevant Rulemaking

On July 24, 2014, the FAA issued AD 2014–15–17, Amendment 39–17919 (79 FR 44268, July 31, 2014), for certain Bombardier, Inc. Model CL–600–2B16 (CL–604 Variant) airplanes. AD 2014–15–17 requires revising the airplane flight manual to incorporate temporary revisions that introduce additional limitations for operation of taxi and landing lights. AD 2014–15–17 requires revising the airplane flight manual only for Bombardier, Inc. Model CL–600–2B16 (CL–604 Variant) airplanes, serial numbers 5301 through 5665 inclusive, and 5701 and subsequent. This AD requires repetitive inspections for any fuel leak in the right-hand landing lights compartment, and related investigative and corrective actions if necessary, for Bombardier, Inc. Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes, serial numbers 5906, 5910, 5912, 5917, 5919 through 5932 inclusive, 5934, 5935, 5939, 5940, 5942, and 5948.

FAA's Determination and Requirements of This 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 issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

The MCAI and Bombardier Alert Service Bulletin A605–28–008, Revision 02, dated July 9, 2014, do not specify corrective actions if any cut is found on the wires or if any damage is found on the O-rings during certain related investigative actions. This AD requires that a replacement be done using a method approved by the FAA, TCCA, or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because fuel leaks in the right-hand landing lights compartment, in combination with the heat generated by the taxi lights and landing lights on the ground reaching the auto-ignition temperature of the fuel, could result in ignition of any fuel or fumes present in the right-hand landing lights compartment. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0650; Directorate Identifier 2014–NM–162–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD 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 AD.

Interim Action

This AD is considered to be interim action. We are currently considering requiring a replacement of the connector of the fuel boost pump canister of the APU, and applicable related investigative and corrective actions, which will constitute terminating action for the repetitive inspections required by this AD action. However, the planned compliance time for the replacement would allow enough time to provide notice and opportunity for prior public comment on the merits of the replacement and applicable related investigative and corrective actions.

Costs of Compliance

We estimate that this AD affects 92 airplanes of U.S. registry.

We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $15,640, or $170 per product.

In addition, we estimate that any necessary follow-on actions will take about 22 work-hours and require parts costing $0, for a cost of $1,870 per product. We have no way of determining the number of aircraft that might need these actions.

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

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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.

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):

2014–20–01 Bombardier, Inc.: Amendment 39–17974. Docket No. FAA–2014–0650; Directorate Identifier 2014–NM–162–AD.

(a) Effective Date

This AD becomes effective October 20, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes, certificated in any category, serial numbers 5906, 5910, 5912, 5917, 5919 through 5932 inclusive, 5934, 5935, 5939, 5940, 5942, and 5948.

(d) Subject

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

(e) Reason

This AD was prompted by a report of fuel leaks in the auxiliary power unit (APU) fuel boost pump canister connector cavity and in the right-hand landing lights compartment from the APU fuel boost pump electrical conduit connection. We are issuing this AD to detect and correct fuel leaks in the right-hand landing lights compartment, which, in combination with the heat generated by the taxi lights and landing lights on the ground reaching the auto-ignition temperature of the fuel, could result in ignition of any fuel or fumes present in the right-hand landing lights compartment.

(f) Compliance

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

(g) Repetitive Inspections for Fuel Leaks

Within 25 flight hours after the effective date of this AD: Do a general visual inspection for any fuel leak in the right-hand landing lights compartment, and do all applicable related investigative and corrective actions, in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A605–28–008, Revision 02, dated July 9, 2014, except as required by paragraph (h) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection thereafter at intervals not to exceed 8 flight hours until the replacement specified in paragraph (i) of this AD has been accomplished.

(h) Corrective Action if Fuel Leak Is Found During Related Investigative Actions

If any fuel leak is found during the related investigative actions required by paragraph (g) of this AD: Before further flight, do the terminating action specified in paragraph (i) of this AD, or repair using a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, Engine and Propeller Directorate, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

(i) Optional Terminating Action—Replacement

Replacing the connector of the fuel boost pump canister of the APU and doing all applicable related investigative actions, in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A605–28–008, Revision 02, dated July 9, 2014, terminates the actions required by paragraph (g) of this AD provided that the following actions are done, as applicable.

(1) If any damage (cuts) is found on the wires, before further flight, replace the wire with a new wire identified in kit 605K28–008A, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A605–28–008, Revision 02, dated July 9, 2014.

(2) If any damage is found on the O-rings, before further flight, replace the O-ring with a new O-ring, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A605–28–008, Revision 02, dated July 9, 2014.

(3) If any fuel leak is found, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, Engine and Propeller Directorate, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(j) Inspection of Connector Wiring

For airplanes having new connectors installed in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A605–28–008, dated April 21, 2014: Within 6 months or 150 flight hours after the effective date of this AD, whichever occurs first, do a detailed inspection for damage (cuts) of the connector wiring, in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A605–28–008, Revision 02, dated July 9, 2014. If any damage (cuts) is found on the wires, before further flight, replace the wire with a new wire identified in kit 605K28–008A, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A605–28–008, Revision 02, dated July 9, 2014.

(k) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using Bombardier Alert Service Bulletin A605–28–008, Revision 01, dated May 28, 2014, which is not incorporated by reference in this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, 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 TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2014–21, dated July 10, 2014, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0650.

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

(n) Material Incorporated by Reference

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

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

(i) Bombardier Alert Service Bulletin A605–28–008, Revision 02, dated July 9, 2014.

(ii) Reserved.

(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. 2014–23145 Filed 10–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0290; Directorate Identifier 2012–NM–210–AD; Amendment 39–17981; AD 2014–20–08]

RIN 2120–AA64

Airworthiness Directives; Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model L–1011 series airplanes. This AD was prompted by reports of cracked rib cap castellations. This AD requires repetitive inspections for castellation and skin clips cracked or damaged between stringers and cracked stringer clips of the wing box pylon back-up structure, and front spar to rear spar; repetitive inspections for cracking, damage, or failure of the pylon back-up torque box structure; repetitive inspections for cracking or damage of the wing box external areas at the drag brace aft wing fitting; repetitive inspections of the outer surface of the wing upper and lower skins for cracks or damage along the rib attachment at the fastener holes and between the two rows of attachment; and corrective actions if necessary. We are issuing this AD to detect and correct cracked or damaged rib cap castellations, which could degrade the structural capabilities of the airplane.

DATES: This AD is effective November 7, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 7, 2014.

ADDRESSES: For service information identified in this AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, L1011 Technical Support Center, Dept. 6A4M, Zone 0579, 86 South Cobb Drive, Marietta, GA 30063–0579; telephone 770–494–5444; fax 770–494–5445; email *L1011.support@lmco.com;* Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html.* 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–2014–0290; 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: Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5554; fax: 404–474–5605; email: *carl.w.gray@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 certain Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model L–1011 series airplanes. The NPRM published in the **Federal Register** on May 29, 2014 (79 FR 30748). The NPRM was prompted by reports of cracked rib cap castellations. The NPRM proposed to require repetitive inspections for castellation and skin clips cracked or damaged between stringers and cracked stringer clips of the wing box pylon back-up structure, and front spar to rear spar; repetitive inspections for cracking, damage, or failure of the pylon back-up torque box structure; repetitive inspections for cracking or damage of the wing box external areas at the drag brace aft wing fitting; repetitive inspections of the outer surface of the wing upper and lower skins for cracks or damage along the rib attachment at the fastener holes and between the two rows of attachment; and corrective actions if necessary. We are issuing this AD to detect and correct cracked or damaged rib cap castellations, which could degrade the structural capabilities of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 30748, May 29, 2014) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 30748, May 29, 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 30748, May 29, 2014).

Costs of Compliance

We estimate that this AD affects 26 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
Inspections	41 work-hours × $85 per hour = $3,485 per inspection cycle.	$0	$3,485 per inspection cycle ..	$90,610 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Modification (up to 12 rib caps per airplane).	96 work-hours × $85 per hour = $8,160 per rib cap.	$15,000 per rib cap	$23,160 per rib cap.

Other than the modification stated above, we have received no definitive data that would enable us to provide cost estimates for the crack repair actions specified in this AD.

Paperwork Reduction Act

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–20–08 Lockheed Martin Corporation/ Lockheed Martin Aeronautics Company: Amendment 39–17981; Docket No. FAA–2014–0290; Directorate Identifier 2012–NM–210–AD.

(a) Effective Date

This AD is effective November 7, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model L–1011–385–1, L–1011–385–1–14, L–1011–385–1–15, and L–1011–385–3 airplanes, certificated in any category, as identified in Lockheed Martin Service Bulletin 093–57–207, Revision 5, dated November 14, 2008.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports of cracked rib cap castellations. We are issuing this AD to detect and correct cracked or damaged rib cap castellations, which could degrade the structural capabilities of the airplane.

(f) Compliance

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

(g) Repetitive Wing Inspections

For Model L–1011–385–1, L–1011–385–1–14, L–1011–385–1–15, and L–1011–385–3 airplanes, serial numbers 1189 and subsequent: At the applicable compliance time specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, do the inspections specified in paragraphs (g)(1) through (g)(4) of this AD. Repeat the inspections thereafter at intervals not to exceed 3,600 flight cycles or 7,200 flight hours, whichever occurs first.

(1) Do a detailed inspection for castellation and skin clips cracked or damaged (including cracks, loose or missing fasteners, oversized and missed drilled fastener holes, corrosion, dents, scratches and other signs of distress) between stringers and cracked stringer clips of the wing box pylon back-up structure, and front spar to rear spar, in accordance with the Accomplishment Instructions of Lockheed Martin Service Bulletin 093–57–207, Revision 5, dated November 14, 2008.

(2) Do a general visual inspection for cracking or damage (including cracks, loose or missing fasteners, oversized and missed drilled fastener holes, corrosion, dents, scratches and other signs of distress) of the pylon back-up torque box structure, in accordance with the Accomplishment Instructions of Lockheed Martin Service Bulletin 093–57–207, Revision 5, dated November 14, 2008.

(3) Do a general visual inspection for cracking, damage (including cracks, loose or missing fasteners, oversized and missed drilled fastener holes, corrosion, dents, scratches and other signs of distress), or failure of the wing box external areas at the

drag brace aft wing fitting, in accordance with the Accomplishment Instructions of Lockheed Martin Service Bulletin 093–57–207, Revision 5, dated November 14, 2008.

(4) Do a general visual inspection for cracking or damage (including cracks, loose or missing fasteners, oversized and missed drilled fastener holes, corrosion, dents, scratches and other signs of distress) of the outer surface of the wing upper and lower skins for cracks along the rib attachment at the fastener holes and between the two rows of attachments, in accordance with the Accomplishment Instructions of Lockheed Martin Service Bulletin 093–57–207, Revision 5, dated November 14, 2008.

(h) Compliance Times for the Actions Specified in Paragraph (g) of This AD

(1) For airplanes that have not accomplished the inspections described in Lockheed Martin Service Bulletin 093–57–207 prior to the effective date of this AD: At the later of the compliance times specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD.

(i) Before the accumulation of 15,000 total flight cycles or 27,000 total flight hours, whichever occurs first.

(ii) Within 1,800 flight cycles or 3,600 flight hours, whichever occurs first, after the effective date of this AD.

(2) For airplanes that have accomplished the inspections described in Lockheed Martin Service Bulletin 093–57–207 prior to the effective date of this AD: Within 3,600 flight cycles or 7,200 flight hours, whichever occurs first, after the completion of the most recent inspections, except as specified in paragraph (h)(3) of this AD.

(3) For rib caps that have been modified as described in Lockheed Martin Service Bulletin 093–57–207: Before the accumulation of 15,000 total flight cycles or 27,000 total flight hours, whichever occurs first, for that rib cap only.

(i) Corrective Actions

If any cracking, damage, or failure is found during any inspection required by paragraph (g) of this AD: Before further flight, do all applicable corrective actions, in accordance with the Accomplishment Instructions of Lockheed Martin Service Bulletin 093–57–207, Revision 5, dated November 14, 2008, except where this service bulletin specifies that all other damaged structural items should be repaired using the best shop practices, following procedures in Structural Repair Manual 57–12–00, this AD requires repairing the damage before further flight, in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(j) Reporting

Submit a report of positive findings of the inspection for cracking, damage, or failure required by this AD to the Manager, Atlanta ACO, at the applicable time specified in paragraph (j)(1) or (j)(2) of this AD. The report must include the inspection results, a description of the discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(k) Paperwork Reduction Act Burden Statement

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

(l) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (i) of this AD, if those actions were performed before the effective date of this AD using Lockheed Martin Service Bulletin 093–57–207, Revision 3, dated November 22, 1991.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta 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.

(n) Related Information

(1) For more information about this AD, contact Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5554; fax: 404–474–5605; email: *carl.w.gray@faa.gov.*

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

(o) 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) Lockheed Martin Service Bulletin 093–57–207, Revision 5, dated November 14, 2008.

(ii) Reserved.

(3) For Lockheed service information identified in this AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, L1011 Technical Support Center, Dept. 6A4M, Zone 0579, 86 South Cobb Drive, Marietta, GA 30063–0579; telephone 770–494–5444; fax 770–494–5445; email *L1011.support@lmco.com;* Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html.*

(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 23, 2014.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–23378 Filed 10–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2014–0722; Airspace Docket No. 14–AWP–9]

RIN 2120–AA66

Change of Controlling Agency for Restricted Areas; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action updates the name of the controlling agency for restricted areas R–2502N Fort Irwin, CA; R–2505 China Lake, CA; R–2506 China Lake South, CA; R–2508 Complex, CA; R–2515 Muroc Lake, CA and R–2524 Trona, CA to read ''FAA, Joshua Control Facility, Edwards AFB, CA.'' This is an administrative change only as there are no changes to the dimensions, time of designation or activities conducted within the affected restricted areas.

DATES: Effective date: 0901 UTC, January 8, 2015.

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

SUPPLEMENTARY INFORMATION:

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by amending the controlling agency name for the following Restricted Areas located in California: R–2502N Fort Irwin, CA, R–2505 China Lake, CA, R–2506 China Lake South, CA, R–2508 Complex, CA, R–2515 Muroc Lake, CA, and R–2524 Trona, CA. The controlling agency for these restricted areas is changed from ''FAA, Hi-Desert TRACON, Edwards AFB, CA'' to ''FAA, Joshua Control Facility, Edwards AFB, CA.''

This is an administrative change to update the name of the controlling agency for the above listed restricted areas. It does not affect the boundaries, designated altitudes, or activities conducted within the restricted areas; therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the descriptions of restricted areas to reflect current facility names.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, paragraph 311d. This airspace action is an administrative change to the descriptions of the affected restricted areas to update the controlling agency name. It does not alter the dimensions, altitudes, or times of designation of the airspace; therefore, it is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

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

§ 73.25 [Amended]

■ 2. § 73.25 is amended as follows:

* * * * *

R–2502N Fort Irwin, CA [Amended]

By removing the current controlling agency and adding in its place:

''Controlling agency. FAA, Joshua Control Facility, Edwards AFB, CA.''

* * * * *

R–2505 China Lake, CA [Amended]

By removing the current controlling agency and adding in its place:

''Controlling agency. FAA, Joshua Control Facility, Edwards AFB, CA.''

R–2506 China Lake South, CA [Amended]

By removing the current controlling agency and adding in its place:

''Controlling agency. FAA, Joshua Control Facility, Edwards AFB, CA.''

* * * * *

R–2508 Complex, CA [Amended]

By removing the current controlling agency and adding in its place:

''Controlling agency. FAA, Joshua Control Facility, Edwards AFB, CA.''

* * * * *

R–2515 Muroc Lake, CA [Amended]

By removing the current controlling agency and adding in its place:

''Controlling agency. FAA, Joshua Control Facility, Edwards AFB, CA.''

* * * * *

R–2524 Trona, CA [Amended]

By removing the current controlling agency and adding in its place:

''Controlling agency. FAA, Joshua Control Facility, Edwards AFB, CA.''

* * * * *

Issued in Washington, DC, on September 25, 2014.

Gary A. Norek,

Manager, Airspace Policy Regulations Group.

[FR Doc. 2014–23662 Filed 10–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 232

[Docket No. FR–5794–N–02]

Federal Housing Administration (FHA): Section 232 Healthcare Facility Insurance Program—Submission of Operator Financial Reports in Accordance With HUD's Uniform Financial Reporting Standards: Commencement of Compliance

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

ACTION: Announcement of commencement of compliance.

SUMMARY: On September 16, 2014, HUD published an interim rule that revised the financial reporting deadlines for operators participating in FHA's program for insurance of health care facilities under section 232 of the National Housing Act (Section 232 program) to bring the operators in-line with the reporting periods prescribed in HUD's Uniform Financial Reporting Standards. In accordance with HUD's regulations implementing its Uniform Financial Reporting Standards, HUD is providing notice that it has issued guidance on the manner in which the reports by operators are to be submitted to HUD.

DATES: *Compliance date:* December 2, 2014.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Office of Residential Care Facilities, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6264, Washington, DC 20410–8000; telephone number 202–708–0599 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Through a final rule published on September 7, 2012, at 77 FR 5512, HUD revised and updated the regulations for FHA's Section 232 program, regulations that had not been revised since 1996. HUD revised the Section 232 program regulations to reflect current policy and practices, and improve accountability and strengthen risk management in the Section 232 program.

Included in the updates made by the 2012 rulemaking were revisions to 24 CFR 5.801 (Uniform Financial Reporting Standards) and 24 CFR 232.1009 (Financial Reports), both of which contained reporting requirements applicable to the Section 232 program. HUD revised these regulatory sections to include operators of projects insured or held by HUD as entities that must submit financial statements to HUD. Owners and borrowers have long been required to submit financial reports. Sections 5.801(c)(4) and 232.1009 provide that operators must submit financial statements to HUD quarterly within 30 calendar days of the date of the end of each fiscal quarter, and 60 calendar days from the end of the fiscal-year-end. The other entities in the Section 232 program required to submit reports were provided slightly longer periods to prepare and submit the reports than that provided to operators. Accordingly, the September 7, 2012, rule placed operators on a different submission deadline than that required of owners.

HUD's interim rule published on September 16, 2014, at 79 FR 55360, revised the financial reporting deadlines for operators to bring them in-line with the reporting periods prescribed in HUD's Uniform Financial Reporting Standards, to which owners and borrowers are subject. The interim rule increases the amount of time operators have to comply with the reporting requirements provided in §§ 5.801(c)(4) and 232.1009. The interim rule provides that operators will have an additional 30 calendar days to comply with the financial statement reporting requirements. Operators will now have 60 calendar days following the end of a fiscal quarter and 90 calendar days following the end of the fiscal-year-end quarter to comply with HUD's financial statement reporting requirements.

Section 5.801(d)(4) of HUD's Uniform Financial Reporting Standards regulations provides that operators of projects with Section 232 insured mortgages (the entities described in § 5.801(a)(6)) must comply with the requirements of § 5.801 with respect to fiscal years commencing on or after the date that is 60 calendar days after the date on which HUD announces, through **Federal Register** notice, that it has issued guidance on the manner in which these reports will be transmitted to HUD.

This document serves as the notice required by § 5.801(d)(4) that HUD has issued guidance on the manner in which the operator financial reports will be transmitted to HUD. That guidance can be found under the Guidance for Lenders' Operator Financial Statement section at *http://portal.hud.gov/hudportal/HUD?src=/federal_housing_administration/healthcare_facilities/residential_care.* Accordingly, operators must comply with the operator financial report requirements for fiscal years commencing on or after December 2, 2014.

Information Collection Requirements

The information collection requirements contained in this rule were reviewed by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB Control Number 2502–0605. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Dated: September 26, 2014.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2014–23484 Filed 10–2–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2014–0606]

RIN 1625–AA00

Eighth Coast Guard District Annual Safety Zones; Three Rivers Towing Association Head of the Ohio Regatta; Allegheny River Mile 0.0 to 3.3; Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Three Rivers Towing Association Head of the Ohio Regatta on the Allegheny River, from mile 0.0 to 3.3, extending the entire width of the river. This zone will be in effect on October 4, 2014 from 6:00 a.m. until 6:00 p.m. This zone is needed to protect vessels transiting the area and event spectators from the hazards associated with the Three Rivers Towing Association Head of the Ohio Regatta. During the enforcement period, entry into, transiting, or anchoring in the safety zone is prohibited to all vessels not registered with the sponsor as participants or official patrol vessels, unless specifically authorized by the Captain of the Port (COTP) Pittsburgh or a designated representative.

DATES: The regulations in 33 CFR 100.801 will be enforced with actual notice on October 4, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of enforcement, call or email Ariana Mohnke, Marine Safety Unit Pittsburgh, U.S. Coast Guard, at telephone (412) 644–5808, email *Ariana.L.Mohnke@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone for the annual Three Rivers Towing Association Head of the Ohio Regatta listed in 33 CFR 100.801 Table 1, Entry No. 31; Sector Ohio Valley.

Under the provisions of 33 CFR 100.801, entry into the safety zone listed in Table 1, Entry No. 31; Sector Ohio Valley is prohibited unless authorized by the COTP or a designated representative. Persons or vessels desiring to enter into or passage through the safety zone must request permission from the COTP Pittsburgh or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the

COTP Pittsburgh or designated representative.

This notice is issued under authority of 5 U.S.C. 552(a); 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1. In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Local Notice to Mariners and updates via Marine Information Broadcasts.

If the COTP Pittsburgh or designated representative determines that the safety zone need not be enforced for the full duration stated in this notice of enforcement, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: September 8, 2014.

L. N. Weaver,

Commander, U.S. Coast Guard, Captain of the Port, Pittsburgh.

[FR Doc. 2014–23652 Filed 10–2–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0831]

RIN 1625–AA00

Safety Zone, Tennessee River Between Mile 4.8 to 5.8; Ledbetter, KY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Tennessee River between mile 4.8 and 5.8. This safety zone is needed to protect persons, property, and infrastructure from potential damage and safety hazards associated with using explosives to demolish the section of the bridge that is over the navigation channel and the resulting recovery of the section from the waterway. Entry into the safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Ohio Valley or a designated representative.

DATES: This rule is effective without actual notice from October 3, 2014 until October 31, 2014. For the purposes of enforcement, actual notice will be used from September 16, 2014, until October 3, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0831]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Heather Norman, Marine Safety Unit Paducah Waterways Management Branch, U.S. Coast Guard; telephone 270–442–1621, email *Heather.Norman@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

APA Administrative Procedure Act
BNM Broadcast Notice to Mariners
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
LNM Local Notice to Mariners
MM Mile Marker
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule.

On September 16, 2014 demolition will begin on the George Rogers Clark Memorial Bridge at mile 5.3 Tennessee River, creating a hazardous condition. This situation requires immediate emergency safety measures to protect persons and property, and a safety zone is in effect to stop all vessel traffic from transiting from mile 4.8 to mile 5.8 Tennessee River. Deviation from this rule may be requested from the Captain of the Port and requests to deviate and transit through this area may be permitted on a case-by-case basis. Once demolition and recovery of bridge debris is completed, the safety zone will be canceled. Delaying this rulemaking to provide a comment period before implementing the necessary safety zone would be contrary to the public interest by delaying the immediate action needed to protect persons, property, and infrastructure from the potential damage and safety hazards associated with the demolition of this bridge.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this emergency rule effective less than 30 days after publication in the **Federal Register**. Providing 30 days notice would be contrary to public interest because immediate action is needed to protect life and property from the hazards associated safety concerns of the George Rogers Clark Memorial Bridge demolition at mile 5.3 Tennessee River.

B. Basis and Purpose

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

The purpose of this safety zone is to protect persons and vessels from the bridge demolition operations, which pose a significant safety hazard at mile 5.3 Tennessee River. For this reason, the Coast Guard is prohibiting entry into this zone by all vessels during the enforcement period unless authorized by the COTP Ohio Valley or a designated representative.

C. Discussion of the Rule

The Coast Guard is establishing a temporary safety zone on the Tennessee River from mile 4.8 to 5.8, extending the entire width of the river. Entry into this zone is prohibited to all vessels and persons unless specifically authorized by the COTP Sector Ohio Valley or a designated representative.

This rule is effective and enforceable with actual notice on September 16, 2014 through October 31, 2014, or until all demolition debris has been removed from the waterway and deemed to no longer pose a threat to the public. At that time the safety zone will be canceled. Any exceptions to these operational restrictions must be

authorized by the COTP Ohio Valley or a designated representative. The COTP or a designated representative may be contacted by telephone at 502–779–5422.

D. Regulatory Analyses

We developed this 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 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. This rule establishes a temporary safety zone for vessels on all waters of the Tennessee River, extending the entire width from mile 4.8 to 5.8. Notifications to the marine community will be made through Broadcast Notices to Mariners (BNM). The impacts on routine navigation are expected to be minimal as the restrictions will be enforced only as necessary while demolition and debris recovery operations of the George Rogers Clark Memorial Bridge, mile 5.3 Tennessee River, are conducted. After demolition and debris recovery operations are complete, the safety zone will be canceled. Additionally, deviation from the safety zone restriction may be requested from the COTP Ohio Valley or designated representative and will be considered on a case-by-case basis.

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 Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Tennessee River from mile 4.8 to 5.8 from September 16, 2014 through October 31, 2014. This safety zone will not have a significant economic impact on a substantial number of small entities. Traffic in this area is limited to almost entirely recreational vessels and commercial towing vessels, and the restrictions will be enforced only as necessary while the demolition and debris removal of the George Rogers Clark Memorial Bridge is being conducted. When this is completed, the safety zone will be canceled. Deviation from the safety zone restriction may be requested from the COTP Ohio Valley or designated representative and will be considered on a case-by-case basis.

3. Assistance for Small Entities

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

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

4. Collection of Information

This rule 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 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations

That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the creation of a safety zone in response to an emergency situation. The safety zone is implemented to protect persons and property due to a structurally deficient bridge at mile 5.3 Tennessee River. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination will be made available as indicated under the **ADDRESSES** section.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T08–0831 is added to read as follows:

§ 165.T08–0831 Safety Zone, Tennessee River MM 4.8 to 5.8; Ledbetter, KY.

(a) *Location.* The following area is a safety zone: All waters of the Tennessee River from mile 4.8 to 5.8, extending the entire width of the river.

(b) *Effective dates.* This safety zone is effective and enforceable with actual notice on September 16, 2014 through October 31, 2014 or until the demolition and debris removal of the George Rogers Clark Memorial Bridge is completed and no longer poses a threat to the public. At that time the safety zone will be canceled.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port (COTP) Ohio Valley or a designated representative.

(2) All persons and vessels shall comply with the instructions of the COTP and designated on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) Persons or vessels may request deviation from the safety zone restriction prescribed under paragraph (c)(1) of this section from the COTP Ohio Valley or a designated representative who may be a commissioned, warrant, or petty officer of the Coast Guard. The COTP Ohio Valley may be contacted by telephone at 1–800–253–7465 or on VHF–FM channel 16.

(d) *Informational broadcasts.* The COTP, Ohio Valley or a designated representative will inform the public through broadcast notices to mariners (BNM) of the effective period for the safety zone and of any changes in the effective period, size, or restrictions of the safety zone.

Dated: September 16, 2014.

R.V. Timme,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2014–23653 Filed 10–2–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0855]

RIN 1625–AA00

Safety Zone, Navy Exercise, Delaware Bay and Atlantic Ocean; Cape May, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three temporary safety zones on the waters of the Delaware Bay and North Atlantic Ocean adjacent to Cape May, New Jersey. The safety zones will restrict vessel traffic on a portion of the Delaware Bay and North Atlantic Ocean while a Navy exercise is taking place. These temporary safety zones are necessary to protect the surrounding public and vessels from the hazards associated the exercise.

DATES: This rule is effective October 3, 2014 through October 24, 2014 and will be enforced from October 16, 2014 to October 24, 2014 from 6:00 a.m. until 8:00 p.m. each day.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0855]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email If you have questions on this temporary rule, call or email Lieutenant Brennan Dougherty, U.S. Coast Guard, Sector Delaware Bay, Chief Waterways Management Division, Coast Guard; telephone (215) 271–4851, email *Brennan.P.Dougherty@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule as publishing an NPRM is impracticable given that the final details for this event were not received by the Coast Guard until September 8, 2014, and this exercise is scheduled to take place from October 16, 2014 to October 24, 2014. Further, allowing this event to go forward

without these safety zones in place would expose mariners and the public to unnecessary dangers associated with this exercise contrary to the public interest. Vessels transiting or attempting to transit through these areas may be at risk, and therefore the safety zones are needed to protect the public from the hazards associated with this exercise. Therefore, delay in taking action is both impracticable and contrary to public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** as any delay encountered in this regulation's effective date would be contrary to public interest because immediate action is needed to provide for the safety of life and property from the hazards associated with the naval exercise.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

From October 16, 2014, until October 24, 2014, a Navy exercise will take place in a portion of the Delaware Bay and the North Atlantic Ocean near Cape May, New Jersey. This regulation is necessary because of the ongoing hazards associated with the exercise. Once operations are concluded, an informational broadcast will inform mariners that the saftey zone is no longer being enforced. The Captain of the Port is establishing this safety zone to ensure the safety of life and property of all mariners and vessels transiting the local area.

C. Discussion of the Final Rule

To mitigate the risks associated with the Navy exercise, the Captain of the Port, Sector Delaware Bay will enforce temporary safety zones in Delaware Bay and the North Atlantic Ocean near Cape May, New Jersey. The safety zones will encompass two areas within Delaware Bay and one area in the North Atlantic Ocean.

The first safety zone will encompass all waters of the Delaware Bay, bounded by a line connecting the following points; latitude 38°54′10″ N, longitude 075°03′12″ W thence north to latitude 39°02′24″ N, longitude 075°02′38″ W thence east to latitude 39°02′24″ N, longitude 075°01′42″ W thence southeast to latitude 38°54′22″ N, longitude 075°01′18″ W thence west to point of origin.

The second safety zone will encompass all waters of the Delaware Bay bounded by a line connecting the following points; latitude 38°54′17″ N, longitude 075°07′50″ W thence northwest to latitude 39°04′06″ N, longitude 075°13′54″ W thence northeast to latitude 39°04′39″ N, longitude 074°12′39″ W thence southeast to latitude 38°55′04″ N, longitude 075°06′38″ W thence southwest to point of origin.

The third safety zone will encompass a portion of the North Atlantic Ocean bounded by a line connecting the following points; latitude 38°49′57″ N, longitude 074°47′41″ W thence northeast to latitude 38°54′28″ N, longitude 074°43′15″ W thence southeast to latitude 38°54′11″ N, longitude 074°42′45″ W thence southwest to latitude 38°49′39″ N, longitude 074°47′10″ W thence northwest to point of origin, off the coast of Cape May, NJ.

All of the safety zones will be effective and enforced from October 16, 2014 to October 24, 2014 from 6:00 a.m. until 8:00 p.m. each day. Entry into, transiting, or anchoring within the safety zone is prohibited.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation will restrict access to the regulated area, the effect of this rule will not be significant because: (i) the Coast Guard will make extensive notification of the Safety Zone to the maritime public via maritime advisories so mariners can alter their plans accordingly; (ii) this rule will be enforced until the area is deemed safe to transit.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to anchor or transit along a portion of Delaware Bay and North Atlantic Ocean adjacent to Cape May, New Jersey from October 16, 2014 to October 24, 2014 from 6:00 a.m. until 8:00 p.m. each day, unless cancelled earlier by the Captain of the Port once all operations are completed. Once operations are concluded, an informational broadcast will inform mariners that the safety zone is no longer being enforced.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: the zone is limited in size and duration. Sector Delaware Bay will issue maritime advisories widely available to users of the Delaware River.

3. Assistance for Small Entities

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

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

4. Collection of Information

This rule 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 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 rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR Part 165, applicable to safety zones on the navigable waterways. The zones will temporarily restrict vessel traffic from transiting a portion of the Delaware Bay and North Atlantic Ocean in vicinity of Cape May, New Jersey, in order to protect the safety of life and property on the waters until the exercise is complete. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T05–0855 to read as follows

§ 165.T05–0855 Safety Zones, Navy Exercise, Delaware Bay and Atlantic Ocean; Cape May, NJ.

(a) *Regulated area.* The following areas are safety zones: (1) All waters of the Delaware Bay, bounded by a line connecting the following points: s all waters of the Delaware Bay, bounded by a line connecting the following points; latitude 38°54′10″ N, longitude 075°03′12″ W thence north to latitude 39°02′24″ N, longitude 075°02′38″ W thence east to latitude 39°02′24″ N, longitude 075°01′42″ W thence southeast to latitude 38°54′22″ N, longitude 075°01′18″ W thence west to point of origin.

(2) All waters of the Delaware Bay bounded by a line connecting the following points; latitude 38°54′17″ N, longitude 075°07′50″ W thence northwest to latitude 39°04′06″ N, longitude 075°13′54″ W thence northeast to latitude 39°04′39″ N, longitude 074°12′39″ W thence southeast to latitude 38°55′04″ N, longitude 075°06′38″ W thence southwest to point of origin.

(3) All waters of the North Atlantic Ocean bounded by a line connecting the following points; latitude 38°49′57″ N, longitude 074°47′41″ W thence northeast to latitude 38°54′28″ N, longitude 074°43′15″ W thence southeast to latitude 38°54′11″ N, longitude 074°42′45″ W thence southwest to latitude 38°49′39 ″N, longitude 074°47′10″ W thence northwest to point of origin, off the coast of Cape May, NJ.

(b) Enforcement period. This rule will be enforced from October 16, 2014 to October 24, 2014 from 6:00 a.m. until 8:00 p.m. each day, unless cancelled earlier by the Captain of the Port once all operations are completed.

(c) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) This section applies to all vessels wishing to transit through the Safety

Zone except vessels that are engaged in the following operations:

(i) Enforcing laws;

(ii) Servicing aids to navigation; and

(iii) Emergency response vessels.

(2) No person or vessel may enter or remain in a safety zone without the permission of the Captain of the Port;

(3) Each person and vessel in a safety zone shall obey any direction or order of the Captain of the Port;

(4) No person may board, or take or place any article or thing on board, any vessel in a safety zone without the permission of the Captain of the Port; and

(5) No person may take or place any article or thing upon any waterfront facility in a safety zone without the permission of the Captain of the Port.

(d) Definitions. The *Captain of the Port* means the Commander of Sector Delaware Bay or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on her behalf.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the Safety Zone by Federal, State, and local agencies.

Dated: September 23, 2014.

K. Moore,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2014–23659 Filed 10–2–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2014–0141; FRL–9917–10–Region–10]

Approval and Promulgation of Implementation Plans; Washington: General Regulations for Air Pollution Sources

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Washington State Implementation Plan (SIP) submitted by the Department of Ecology (Ecology) on January 27, 2014. These revisions were submitted in accordance with the requirements of section 110 of the Clean Air Act, which requires states to develop a plan for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS). The revisions update the general air quality regulations that apply to sources within Ecology's jurisdiction, except for major source specific provisions which the EPA is addressing separately.

DATES: This final rule is effective on November 3, 2014.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2014–0141. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Programs Unit, Office of Air Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA, 98101. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information on the New Source Review permitting program, please contact Donna Deneen at (206) 553–6706 or *deneen.donna@epa.gov.* For information on the Washington SIP in general, please contact Jeff Hunt at (206) 553–0256, *hunt.jeff@epa.gov,* or by using the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION:

Definitions

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

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

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

(iii) The initials ''SIP'' mean or refer to State Implementation Plan.

(iv) The words ''Washington'' and ''State'' mean the State of Washington.

Table of Contents

I. Background Information
II. Response to Comments
III. Final Action
IV. Statutory and Executive Orders Review

I. Background Information

Title I of the CAA, as amended by Congress in 1990, specifies the general requirements for states to submit SIPs to attain or maintain the NAAQS and the EPA's actions regarding approval of those SIPs. On January 27, 2014, Ecology submitted updates to portions of Chapter 173–400 of the Washington Administrative Code (WAC) currently in the Federally-approved Washington SIP (40 CFR part 52, subpart WW). Ecology did not submit to the EPA those sections of Chapter 173–400 WAC that have not changed since the last SIP approval by the EPA. Ecology also did not submit certain provisions of Chapter 173–400 WAC because they are not related to the criteria pollutants regulated under title I of the CAA, not essential for meeting and maintaining the NAAQS, or not related to the requirements for SIPs under section 110 of the CAA. The SIP revisions covered by this action are explained in more detail in the proposed rulemaking, along with an evaluation of how these rules comply with the CAA requirements for SIPs (79 FR 39351, July 10, 2014). Also included in the proposed rulemaking is a discussion of how the EPA intends to act on the remainder of Ecology's submittal, covering the Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and visibility permitting programs for major sources. See also the EPA's proposed rulemaking on the NNSR-specific provisions (79 FR 43345, July 25, 2014).

II. Response to Comments

The EPA received one set of comments on its proposal.

Comment: The commenter pointed to another rulemaking action in which Ecology stated that a notice of construction (NOC) [1] approval order issued under WAC 173–400–113(1) does not need to include conditions requiring compliance with federal New Source Performance Standards (NSPS) or National Emissions Standards for Hazardous Air Pollutants (NESHAP), but that WAC 173–400–113(1) instead only requires that Ecology determine, prior to issuance of an NOC approval order, that the new or modified source in an attainment area will comply with the NSPS and NESHAP. The commenter states that the EPA's approval of WAC 173–400–113(1) into the Washington SIP therefore would ''give a green light'' to a regulation that allows Ecology to omit conditions in orders that would require compliance with applicable NSPS and NESHAP. The commenter

[1] Washington's air permitting program uses the terms ''Notice of Construction approval order'' or ''NOC approval order,'' which are more commonly referred to as construction permits in other states and as new source review permits under the CAA.

further states that, because conditions in orders issued under WAC 173–400 are applicable requirements under Ecology's title V operating permit program, Ecology's actions taken under WAC 173–400 directly impact Ecology's implementation of the CAA title V program in Washington. The commenter also raises concerns with Ecology's implementation of requirements under section 112 of the CAA, which addresses hazardous air pollutants (HAPs). The commenter states that the EPA's approval of WAC 173–400–113(1) as part of the Washington SIP would add EPA concurrence to Ecology's ability to remove a HAP (in particular, radionuclides) from section 112 of the CAA and thereby to remove all federally-enforceable requirements controlling emissions of that particular HAP from regulation under title V of the CAA in Washington. The commenter also questions whether the EPA has authority to make enforceable under federal law a provision in a state regulation giving Ecology the ability to omit applicable NSPS and NESHAPs requirements from an NOC approval order and the ability to move enforcement of federal requirements regulating a HAP from the CAA to a state regulation that is both unenforceable under federal law and unenforceable by Ecology.

Response: The EPA disagrees that Ecology's SIP is deficient if new source review permits issued under the SIP do not include NSPS or NESHAP requirements. In this action, the EPA is approving WAC 173–400–113(1) for purposes of implementing the requirements of Section 110 of the CAA, particularly, the minor new source review requirements of CAA Section 110(a)(2)(C) and 40 CFR 51.160. Neither that CAA section nor that CFR provision require minor new source review permits to contain NSPS and NESHAPs requirements. Indeed, this action does not address the WAC provisions associated with implementation of sections 111 and 112. Washington has not submitted for inclusion into the SIP and the EPA has not approved into the SIP WAC 173–400–115, in which Ecology has incorporated by reference most of the NSPS as a matter of state law, or WAC 173–400–075, in which Ecology has incorporated by reference most of the NESHAP as a matter of state law. In this action, EPA is approving a state law provision related to implementation of CAA section 110. Section 110 focuses on implementation of the NAAQS. The NSPS and NESHAP are promulgated under other sections of the CAA (CAA sections 111 and 112, respectively), and any state programs implementing the NSPS and NESHAP for CAA purposes are submitted and approved by EPA under those other statutory authorities. To the extent the comment raises questions regarding the adequacy of Ecology's title V, NSPS, or NEHSAP programs under the CAA, those issues are outside the scope of this rulemaking, which relates solely to whether the regulations submitted by Ecology meet the requirements for approval into the SIP under section 110 of the CAA. The EPA notes, with limited exceptions not relevant here, that the NSPS and NESHAP standards are federally enforceable against affected sources under the CAA independently of whether such standards have been adopted by a state as a matter of state law. In addition, they are also ''applicable requirements'' for purposes of the title V program, 40 CFR 70.2, and as such a title V permit must contain emission limitations and standards that assure compliance with any such applicable requirements at the time of permit issuance, 40 CFR 70.6(a).

III. Final Action

The EPA is approving into the SIP at 40 CFR part 52, subpart WW, the Ecology regulations listed in Table 1. It is important to note that Ecology did not submit for approval into the SIP certain provisions of Chapter 173–400 WAC, generally because they are not related to the criteria pollutants regulated under title I of the CAA, are not essential for meeting and maintaining the NAAQS, or are not related to the requirements for SIPs under section 110 of the CAA. These exceptions are noted in the ''Explanation'' column of the table. The EPA's review and approval of the revised WAC 173–400–110 through –113, 173–400–036, 173–400–171, and 173–400–560 in this action is not a determination that these revised regulations meet requirements for major sources such as a SIP-approved PSD permitting program (40 CFR 51.166), a SIP-approved major NNSR permitting program (40 CFR 51.165), or a SIP-approved visibility program (40 CFR 51.307). These regulations are marked with asterisks in Table 1. The EPA will evaluate these regulations for consistency with the requirements for major NSR permitting programs and visibility in a separate action.

As discussed in the proposed rulemaking for this action, with respect to WAC 173–400–020, *Applicability,* the EPA's approval for this action is limited to only those counties or sources where the Department of Ecology has direct jurisdiction. This action excludes sources subject to Energy Facilities Site Evaluation Council (EFSEC) or local clean air agency jurisdiction. The counties where Ecology has direct jurisdiction are: Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Stevens, Walla Walla, and Whitman. The EPA also notes that under the SIP-approved provisions of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012, Ecology has direct, statewide jurisdiction for kraft pulping mills, sulfite pulping mills, and primary aluminum plants. The EPA is updating 40 CFR part 52, subpart WW to reflect these changes.

TABLE 1—APPROVED WASHINGTON STATE DEPARTMENT OF ECOLOGY REGULATIONS

State citation	Title/subject	State effective date	Explanation
Chapter 173–400 WAC, General Regulations for Air Pollution Sources			
173–400–020	Applicability	12/29/12	
173–400–030	Definitions	12/29/12	Except: 173–400–030(91).
173–400–036 * ..	Relocation of Portable Sources	12/29/12	
173–400–040	General Standards for Maximum Emissions	4/1/11	Except: 173–400–040(2)(c); 173–400–040(2)(d); 173–400–040(3); 173–400–040(5); 173–400–040(7), second paragraph.

TABLE 1—APPROVED WASHINGTON STATE DEPARTMENT OF ECOLOGY REGULATIONS—Continued

State citation	Title/subject	State effective date	Explanation
173–400–050	Emission Standards for Combustion and Incineration Units	12/29/12	Except: 173–400–050(4); 173–400–050(5).
173–400–060	Emission Standards for General Process Units	2/10/05	
173–400–070	Emission Standards for Certain Source Categories	12/29/12	Except: 173–400–070(7); 173–400–070(8).
173–400–081	Startup and Shutdown	4/1/11	
173–400–091	Voluntary Limits on Emissions	4/1/11	
173–400–105	Records, Monitoring, and Reporting	12/29/12	
173–400–110 * ..	New Source Review (NSR) for Sources and Portable Sources ..	12/29/12	Except: 173–400–110(1)(c)(ii)(C); 173–400–110(1)(e); 173–400–110(2)(d); The part of WAC 173–400–110(4)(b)(vi) that says, • ''not for use with materials containing toxic air pollutants, as listed in chapter 173–460 WAC,''; The part of 400–110 (4)(e)(iii) that says, • ''where toxic air pollutants as defined in chapter 173–460 WAC are not emitted''; The part of 400–110(4)(e)(f)(i) that says, • ''that are not toxic air pollutants listed in chapter 173–460 WAC''; The part of 400–110 (4)(h)(xviii) that says, • '', to the extent that toxic air pollutant gases as defined in chapter 173–460 WAC are not emitted''; The part of 400–110 (4)(h)(xxxiii) that says, • ''where no toxic air pollutants as listed under chapter 173–460 WAC are emitted''; The part of 400–110(4)(h)(xxxiv) that says, • '', or ≤ 1% (by weight) toxic air pollutants as listed in chapter 173–460 WAC''; The part of 400–110(4)(h)(xxxv) that says, • ''or ≤ 1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xxxvi) that says, • ''or ≤ 1% (by weight) toxic air pollutants as listed in chapter 173–460 WAC''; 400–110(4)(h)(xl) , second sentence; The last row of the table in 173–400–110(5)(b) regarding exemption levels for Toxic Air Pollutants.
173–400–111 * ..	Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources.	12/29/12	Except: 173–400–111(3)(h); 173–400–111(3)(i); The part of 173–400–111(8)(a)(v) that says, • ''and 173–460–040,''; 173–400–111(9).
173–400–112 * ..	Requirements for New Sources in Nonattainment Areas—Review for Compliance with Regulations.	12/29/12	Except: 173–400–112(8).
173–400–113 * ..	New Sources in Attainment or Unclassifiable Areas—Review for Compliance with Regulations.	12/29/12	Except: 173–400–113(3), second sentence.
173–400–118	Designation of Class I, II, and III Areas	12/29/12	
173–400–151	Retrofit Requirements for Visibility Protection	2/10/05	
173–400–171 * ..	Public Notice and Opportunity for Public Comment	12/29/12	Except: The part of 173–400–171(3)(b) that says, • ''or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173–460 WAC''; 173–400–171(12).
173–400–175	Public Information	2/10/05	
173–400–200	Creditable Stack Height and Dispersion Techniques	2/10/05	
173–400–560 * ..	General Order of Approval	12/29/12	Except: The part of 173–400–560(1)(f) that says, • ''173–460 WAC''.

IV. Statutory and Executive Orders Review

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

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

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law. Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989,* 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the EPA nonetheless provided a consultation opportunity to the Puyallup Tribe in a letter dated February 25, 2014. The EPA did not receive a request for consultation.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 2, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 16, 2014.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart WW—Washington

■ 2. Section 52.2470 is amended by revising paragraph (c) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) *EPA approved regulations.*

TABLE 1—REGULATIONS APPROVED STATEWIDE

State citation	Title/subject	State effective date	EPA approval date	Explanations
Washington Administrative Code, Chapter 173–405—Kraft Pulping Mills				
173–405–012	Statement of Purpose	3/22/91	1/15/93, 58 FR 4578.	
173–405–021	Definitions	3/22/91	1/15/93, 58 FR 4578.	
173–405–040	Emissions Standards	3/22/91	1/15/93, 58 FR 4578	except for sections (1)(b), (1)(c), (3)(b), (3)(c), (4), (7), (8) & (9)
173–405–045	Creditable Stack Height & Dispersion Techniques.	3/22/91	1/15/93, 58 FR 4578.	
173–405–061	More Restrictive Emission Standards	3/22/91	1/15/93, 58 FR 4578.	

TABLE 1—REGULATIONS APPROVED STATEWIDE—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
173–405–072	Monitoring Requirements	3/22/91	1/15/93, 58 FR 4578	except section (2)
173–405–077	Report of Startup, Shutdown, Breakdown or Upset Conditions.	3/22/91	1/15/93, 58 FR 4578.	
173–405–078	Emission Inventory	3/22/91	1/15/93, 58 FR 4578.	
173–405–086	New Source Review (NSR)	3/22/91	1/15/93, 58 FR 4578.	
173–405–087	Prevention of Significant Deterioration (PSD)	3/22/91	1/15/93, 58 FR 4578.	
173–405–091	Special Studies	3/22/91	1/15/93, 58 FR 4578.	
Washington Administrative Code, Chapter 173–410—Sulfite Pulping Mills				
173–410–012	Statement of Purpose	3/22/91	1/15/93, 58 FR 4578.	
173–410–021	Definitions	3/22/91	1/15/93, 58 FR 4578.	
173–410–040	Emissions Standards	3/22/91	1/15/93, 58 FR 4578	except the exception provision in (3) & section (5)
173–410–045	Creditable Stack Height & Dispersion Techniques.	3/22/91	1/15/93, 58 FR 4578.	
173–410–062	Monitoring Requirements	3/22/91	1/15/93, 58 FR 4578.	
173–410–067	Report of Startup, Shutdown, Breakdown or Upset Conditions.	3/22/91	1/15/93, 58 FR 4578.	
173–410–071	Emission Inventory	3/22/91	1/15/93, 58 FR 4578.	
173–410–086	New Source Review (NSR)	3/22/91	1/15/93, 58 FR 4578.	
173–410–087	Prevention of Significant Deterioration (PSD)	3/22/91	1/15/93, 58 FR 4578.	
173–410–100	Special Studies	3/22/91	1/15/93, 58 FR 4578.	
Washington Administrative Code, Chapter 173–415—Primary Aluminum Plants				
173–415–010	Statement of Purpose	3/22/91	1/15/93, 58 FR 4578.	
173–415–020	Definitions	3/22/91	1/15/93, 58 FR 4578	except sections (1) & (2)
173–415–030	Emissions Standards	3/22/91	1/15/93, 58 FR 4578	except sections (1) & (3)(b)
173–415–045	Creditable Stack Height & Dispersion Techniques.	3/22/91	1/15/93, 58 FR 4578.	
173–415–050	New Source Review (NSR)	3/22/91	1/15/93, 58 FR 4578.	
173–415–051	Prevention of Significant Deterioration (PSD)	3/22/91	1/15/93, 58 FR 4578.	
173–415–060	Monitoring and Reporting	3/22/91	1/15/93, 58 FR 4578	except sections (1)(a), (b), & (d)
173–415–070	Report of Startup, Shutdown, Breakdown or Upset Conditions.	3/22/91	1/15/93, 58 FR 4578.	
173–415–080	Emission Inventory	3/22/91	1/15/93, 58 FR 4578.	
Washington Administrative Code, Chapter 173–422—Motor Vehicle Emission Inspection				
173–422–010	Purpose	6/3/93	9/25/96, 61 FR 50235.	
173–422–020	Definitions	3/31/95	9/25/96, 61 FR 50235.	
173–422–030	Vehicle Emission Inspection Requirement	11/9/96	5/19/97, 62 FR 27204.	
173–422–031	Vehicle Emission Inspection Schedules	12/2/00	5/12/05, 70 FR 24491.	
173–422–035	Registration Requirements	3/31/95	9/25/96, 61 FR 50235.	
173–422–040	Noncompliance Areas	6/3/93	9/25/96, 61 FR 50235.	
173–422–050	Emission Contributing Areas	11/9/96	5/19/97, 62 FR 27204.	
173–422–060	Gasoline Vehicle Emission Standards	11/9/96	5/19/97, 62 FR 27204.	
173–422–065	Diesel Vehicle Exhaust Emission Standards	3/31/95	9/25/96, 61 FR 50235.	
173–422–070	Gasoline Vehicle Exhaust Emission Testing Procedures.	11/9/96	5/19/97, 62 FR 27204.	
173–422–075	Diesel Vehicle Inspection Procedure	3/11/94	9/25/96, 61 FR 50235.	
173–422–090	Exhaust Gas Analyzer Specifications	3/31/95	9/25/96, 61 FR 50235.	
173–422–095	Exhaust Opacity Testing Equipment	3/11/94	9/25/96, 61 FR 50235.	
173–422–100	Testing Equipment Maintenance and Calibration.	3/31/95	9/25/96, 61 FR 50235.	
173–422–120	Quality Assurance	3/31/95	9/25/96, 61 FR 50235.	
173–422–130	Inspection Fees	3/11/94	9/25/96, 61 FR 50235.	
173–422–145	Fraudulent Certificates of Compliance/Acceptance.	4/6/90	9/25/96, 61 FR 50235.	
173–422–160	Fleet and Diesel Owner Vehicle Testing Requirements.	3/31/95	9/25/96, 61 FR 50235.	
173–422–170	Exemptions	12/2/00	5/12/05, 70 FR 24491.	
173–422–175	Fraudulent Exemptions	1/2/84	9/25/96, 61 FR 50235.	
173–422–190	Emission Specialist Authorization	11/9/96	5/19/97, 62 FR 27204.	
173–422–195	Listing of Authorized Emission Specialists	3/31/95	9/25/96, 61 FR 50235.	
Washington Administrative Code, Chapter 173–425—Open Burning				
173–425–010	Purpose	10/18/90	1/15/93, 58 FR 4578.	
173–425–020	Applicability	10/18/90	1/15/93, 58 FR 4578.	

TABLE 1—REGULATIONS APPROVED STATEWIDE—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
173–425–030	Definitions	10/18/90	1/15/93, 58 FR 4578.	
173–425–036	Curtailment During Episodes or Impaired Air Quality.	10/18/90	1/15/93, 58 FR 4578.	
173–425–045	Prohibited Materials	1/3/89	1/15/93, 58 FR 4578.	
173–425–055	Exceptions	10/18/90	1/15/93, 58 FR 4578.	
173–425–065	Residential Open Burning	10/18/90	1/15/93, 58 FR 4578.	
173–425–075	Commercial Open Burning	10/18/90	1/15/93, 58 FR 4578.	
173–425–085	Agricultural Open Burning	10/18/90	1/15/93, 58 FR 4578.	
173–425–095	No Burn Area Designation	10/18/90	1/15/93, 58 FR 4578.	
173–425–100	Delegation of Agricultural Open Burning Program.	10/18/90	1/15/93, 58 FR 4578.	
173–425–115	Land Clearing Projects	10/18/90	1/15/93, 58 FR 4578.	
173–425–120	Department of Natural Resources Smoke Management Plan.	10/18/90	1/15/93, 58 FR 4578.	
173–425–130	Notice of Violation	10/18/90	1/15/93, 58 FR 4578.	
173–425–140	Remedies	10/18/90	1/15/93, 58 FR 4578.	
Washington Administrative Code, Chapter 173–430—Burning of Field and Forage and Turf Grasses Grown for Seed Open Burning				
173–430–010	Purpose	10/18/90	1/15/93, 58 FR 4578.	
173–430–020	Definitions	10/18/90	1/15/93, 58 FR 4578.	
173–430–030	Permits, Conditions, and Restrictions	10/18/90	1/15/93, 58 FR 4578.	
173–430–040	Mobile Field Burners	10/18/90	1/15/93, 58 FR 4578.	
173–430–050	Other Approvals	10/18/90	1/15/93, 58 FR 4578.	
173–430–060	Study of Alternatives	10/18/90	1/15/93, 58 FR 4578.	
173–430–070	Fees	10/18/90	1/15/93, 58 FR 4578.	
173–430–080	Certification of Alternatives	10/18/90	1/15/93, 58 FR 4578.	
Washington Administrative Code, Chapter 173–433—Solid Fuel Burning Device Standards				
173–433–010	Purpose	2/23/14	5/9/14, 79 FR 26628.	
173–433–020	Applicability	12/16/87	1/15/93, 58 FR 4578.	
173–433–030	Definitions	2/23/14	5/9/14, 79 FR 26628.	
173–433–100	Emission Performance Standards	2/23/14	5/9/14, 79 FR 26628.	
173–433–110	Opacity Standards	2/23/14	5/9/14, 79 FR 26628.	
173–433–120	Prohibited Fuel Types	2/23/14	5/9/14, 79 FR 26628.	
173–433–130	General Emission Standards	10/18/90	1/15/93, 58 FR 4578.	
173–433–140	Criteria for Impaired Air Quality Burn Bans	2/23/14	5/9/14, 79 FR 26628.	
173–433–150	Restrictions on Operation of Solid Fuel Burning Devices.	2/23/14	5/9/14, 79 FR 26628.	
173–433–155	Criteria for Prohibiting Solid Fuel Burning Devices That Are Not Certified.	2/23/14	5/9/14, 79 FR 26628.	
Washington Administrative Code, Chapter 173–434—Solid Waste Incinerator Facilities				
173–434–010	Purpose	10/18/90	1/15/93, 58 FR 4578.	
173–434–020	Applicability and Compliance	1/22/04	8/4/05, 70 FR 44855.	
173–434–030	Definitions	1/22/04	8/4/05, 70 FR 44855.	
173–434–090	Operation and Maintenance Plan	10/18/90	1/15/93, 58 FR 4578.	
173–434–110	Standards of Performance	1/22/04	8/4/05, 70 FR 44855	except section (1)(a)
173–434–130	Emission Standards	1/22/04	8/4/05, 70 FR 44855	except section (2)
173–434–160	Design and Operation	1/22/04	8/4/05, 70 FR 44855.	
173–434–170	Monitoring and Reporting	1/22/04	8/4/05, 70 FR 44855.	
173–434–190	Changes in Operation	1/22/04	8/4/05, 70 FR 44855.	
173–434–200	Emission Inventory	1/22/04	8/4/05, 70 FR 44855.	
173–434–210	Special Studies	10/18/90	1/15/93, 58 FR 4578.	
Washington Administrative Code, Chapter 173–435—Emergency Episode Plan				
173–435–010	Purpose	1/3/89	1/15/93, 58 FR 4578.	
173–435–015	Significant Harm Levels	1/3/89	1/15/93, 58 FR 4578.	
173–435–020	Definitions	1/3/89	1/15/93, 58 FR 4578.	
173–435–030	Episode Stage Criteria	1/3/89	1/15/93, 58 FR 4578.	
173–435–040	Source Emission Reduction Plans	1/3/89	1/15/93, 58 FR 4578.	
173–435–050	Action Procedures	1/3/89	1/15/93, 58 FR 4578.	
173–435–060	Enforcement	1/3/89	1/15/93, 58 FR 4578.	
173–435–070	Sampling Sites, Equipment and Methods	1/3/89	1/15/93, 58 FR 4578	except section (1)
Washington Administrative Code, Chapter 173–476—Ambient Air Quality Standards				
173–476–010	Purpose	12/22/13	3/4/14, 79 FR 12077.	

TABLE 1—REGULATIONS APPROVED STATEWIDE—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
173–476–020	Applicability	12/22/13	3/4/14, 79 FR 12077.	
173–476–030	Definitions	12/22/13	3/4/14, 79 FR 12077.	
173–476–100	Ambient Air Quality Standard for PM–10	12/22/13	3/4/14, 79 FR 12077.	
173–476–110	Ambient Air Quality Standards for PM–2.5	12/22/13	3/4/14, 79 FR 12077.	
173–476–120	Ambient Air Quality Standard for Lead (Pb) ...	12/22/13	3/4/14, 79 FR 12077.	
173–476–130	Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide).	12/22/13	3/4/14, 79 FR 12077.	
173–476–140	Ambient Air Quality Standards for Nitrogen Oxides (Nitrogen Dioxide).	12/22/13	3/4/14, 79 FR 12077.	
173–476–150	Ambient Air Quality Standard for Ozone	12/22/13	3/4/14, 79 FR 12077.	
173–476–160	Ambient Air Quality Standards for Carbon Monoxide.	12/22/13	3/4/14, 79 FR 12077.	
173–476–170	Monitor Siting Criteria	12/22/13	3/4/14, 79 FR 12077.	
173–476–180	Reference Conditions	12/22/13	3/4/14, 79 FR 12077.	
173–476–900	Table of Standards	12/22/13	3/4/14, 79 FR 12077.	
Washington Administrative Code, Chapter 173–490—Emission Standards and Controls for Sources Emitting Volatile Organic Compounds				
173–490–010	Policy and Purpose	3/22/91	7/12/93, 58 FR 37426.	
173–490–020	Definitions	3/22/91	7/12/93, 58 FR 37426.	
173–490–025	General Applicability	3/22/91	7/12/93, 58 FR 37426.	
173–490–030	Registration and Reporting	3/22/91	7/12/93, 58 FR 37426.	
173–490–040	Requirements	3/22/91	7/12/93, 58 FR 37426.	
173–490–080	Exceptions and Alternative Methods	3/22/91	7/12/93, 58 FR 37426.	
173–490–090	New Source Review (NSR)	3/22/91	7/12/93, 58 FR 37426.	
173–490–200	Petroleum Refinery Equipment Leaks	3/22/91	7/12/93, 58 FR 37426.	
173–490–201	Petroleum Liquid Storage in External Floating Roof Tanks.	3/22/91	7/12/93, 58 FR 37426.	
173–490–202	Leaks from Gasoline Transport Tanks and Vapor Collection System.	3/22/91	7/12/93, 58 FR 37426.	
173–490–203	Perchloroethylene Dry Cleaning Systems	3/22/91	7/12/93, 58 FR 37426.	
173–490–204	Graphic Arts System	3/22/91	7/12/93, 58 FR 37426.	
173–490–205	Surface Coating of Miscellaneous Metal Parts and Products.	3/22/91	7/12/93, 58 FR 37426.	
173–490–207	Surface Coating of Flatwood Paneling	3/22/91	7/12/93, 58 FR 37426.	
173–490–208	Aerospace Assembly and Component Coating Operations.	3/22/91	7/12/93, 58 FR 37426.	
Washington Administrative Code, Chapter 173–492—Motor Fuel Specifications for Oxygenated Gasoline				
173–492–010	Policy and Purpose	10/19/96	4/30/97, 62 FR 23363.	
173–492–020	Applicability	12/1/92	4/30/97, 62 FR 23363.	
173–492–030	Definitions	12/1/92	4/30/97, 62 FR 23363.	
173–492–040	Compliance Requirements	12/1/92	4/30/97, 62 FR 23363.	
173–492–050	Registration Requirements	10/19/96	4/30/97, 62 FR 23363.	
173–492–060	Labeling Requirements	12/1/92	4/30/97, 62 FR 23363.	
173–492–070	Control Areas and Control Periods	10/19/96	4/30/97, 62 FR 23363.	
173–492–080	Enforcement and Compliance	12/1/92	4/30/97, 62 FR 23363.	
173–492–090	Unplanned Conditions	12/1/92	4/30/97, 62 FR 23363.	
173–492–100	Severability	12/1/92	4/30/97, 62 FR 23363.	

TABLE 2—ADDITIONAL REGULATIONS APPROVED FOR WASHINGTON DEPARTMENT OF ECOLOGY (ECOLOGY) DIRECT JURISDICTION

[Applicable in Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Stevens, Walla Walla, and Whitman counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction. These regulations also apply statewide for facilities subject to the applicability sections of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
Washington Administrative Code, Chapter 173–400—General Regulations for Air Pollution Sources				
173–400–010	Policy and Purpose	3/22/91	6/2/95, 60 FR 28726.	
173–400–020	Applicability	12/29/12	10/3/14 [Insert **Federal Register** citation].	
173–400–030	Definitions	12/29/12	10/3/14 [Insert **Federal Register** citation].	Except: 173–400–030(91)

TABLE 2—ADDITIONAL REGULATIONS APPROVED FOR WASHINGTON DEPARTMENT OF ECOLOGY (ECOLOGY) DIRECT JURISDICTION—Continued

[Applicable in Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Stevens, Walla Walla, and Whitman counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction. These regulations also apply statewide for facilities subject to the applicability sections of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
173–400–036 * ..	Relocation of Portable Sources	12/29/12	10/3/14 [Insert **Federal Register** citation].	
173–400–040	General Standards for Maximum Emissions.	4/1/11	10/3/14] [Insert **Federal Register** citation].	Except: 173–400–040(2)(c); 173–400–040(2)(d); 173–400–040(3); 173–400–040(5); 173–400–040(7), second paragraph.
173–400–050	Emission Standards for Combustion and Incineration Units.	12/29/12	10/3/14 [Insert **Federal Register** citation].	Except: 173–400–050(4); 173–400–050(5).
173–400–060	Emission Standards for General Process Units.	2/10/05	10/3/14 [Insert **Federal Register** citation].	
173–400–070	Emission Standards for Certain Source Categories.	12/29/12	10/3/14 [Insert **Federal Register** citation].	Except: 173–400–070(7); 173–400–070(8).
173–400–081	Startup and Shutdown	4/1/11	10/3/14 [Insert **Federal Register** citation].	
173–400–091	Voluntary Limits on Emissions	9/20/93	10/3/14 [Insert **Federal Register** citation].	
173–400–105	Records, Monitoring, and Reporting	12/29/12	10/3/14 [Insert **Federal Register** citation].	
173–400–107	Excess Emissions	9/20/93	6/2/95, 60 FR 28726.	
173–400–110 * ..	New Source Review (NSR) for Sources and Portable Sources.	12/29/12	10/3/14 [Insert **Federal Register** citation].	Except: 173–400–110(1)(c)(ii)(C); 173–400–110(1)(e); 173–400–110(2)(d); The part of WAC 173–400–110(4)(b)(vi) that says, ''not for use with materials containing toxic air pollutants, as listed in chapter 173–460 WAC,''; The part of 400–110(4)(e)(iii) that says, ''where toxic air pollutants as defined in chapter 173–460 WAC are not emitted''; The part of 400–110(4)(e)(f)(i) that says, ''that are not toxic air pollutants listed in chapter 173–460 WAC''; The part of 400–110(4)(h)(xviii) that says, '', to the extent that toxic air pollutant gases as defined in chapter 173–460 WAC are not emitted''; The part of 400–110(4)(h)(xxxiii) that says, ''where no toxic air pollutants as listed under chapter 173–460 WAC are emitted''; The part of 400–110(4)(h)(xxxiv) that says, '', or ≤1% (by weight) toxic air pollutants as listed in chapter 173–460 WAC''; The part of 400–110(4)(h)(xxxv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xxxvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xxxvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xxxviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xxxix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xl) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xli) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xlii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xliii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xliv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xlv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xlvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xlvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xlviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xlix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(l) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(li) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(liii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(liv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lx) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxiii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxiv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxx) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxxi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxxii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxxiii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxxiv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxxv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxxvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxxvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxxviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxxix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxxx) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxxxi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxxxii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxxxiii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxxxiv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxxxv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxxxvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxxxvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxxxviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(lxxxix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xc) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xci) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xcii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xciii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xciv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xcv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xcvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xcvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xcviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(xcix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(c) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ci) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ciii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(civ) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cviii) that says, ''or ≤1% (by weight) toxic air pollutants''; 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The part of 400–110(4)(h)(clxxxi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(clxxxii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(clxxxiii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(clxxxiv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(clxxxv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(clxxxvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(clxxxvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(clxxxviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(clxxxix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cxc) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cxci) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cxcii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cxciii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cxciv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cxcv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cxcvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cxcvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cxcviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cxcix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cc) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cci) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cciii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccciv) that says, ''or ≤1% (by weight) toxic air pollutants''; 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The part of 400–110(4)(h)(ccxvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxx) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxxi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxxii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxxiii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxxiv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxxv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxxvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxxvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxxviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxxix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxxx) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxxxi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxxxii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxxxiii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxxxiv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxxxv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxxxvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxxxvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxxxviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxxxix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxl) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxli) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxlii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxliii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxliv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxlv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxlvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxlvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxlviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxlix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccl) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccli) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccliii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclx) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxiii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxiv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxx) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxxi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxxii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxxiii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxxiv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxxv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxxvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxxvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxxviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxxix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxxx) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxxxi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxxxii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxxxiii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxxxiv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxxxv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxxxvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxxxvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxxxviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cclxxxix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxc) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxci) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxcii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxciii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxciv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxcv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxcvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxcvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxcviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccxcix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccc) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccci) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(ccciii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccciv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccx) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxiii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxiv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxx) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxxi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxxii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxxiii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxxiv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxxv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxxvi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxxvii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxxviii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxxix) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxxx) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxxxi) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxxxii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxxxiii) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxxxiv) that says, ''or ≤1% (by weight) toxic air pollutants''; The part of 400–110(4)(h)(cccxxxv) that says

TABLE 2—ADDITIONAL REGULATIONS APPROVED FOR WASHINGTON DEPARTMENT OF ECOLOGY (ECOLOGY) DIRECT JURISDICTION—Continued

[Applicable in Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Stevens, Walla Walla, and Whitman counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction. These regulations also apply statewide for facilities subject to the applicability sections of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
				The part of 400–110(4)(h)(xxxvi) that says, "or ≤ 1% (by weight) toxic air pollutants as listed in chapter 173–460 WAC"; 400–110(4)(h)(xl), second sentence; The last row of the table in 173–400–110(5)(b) regarding exemption levels for Toxic Air Pollutants.
173–400–111* ..	Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources.	12/29/12	10/3/14 [Insert **Federal Register** citation].	Except: 173–400–111(3)(h); 173–400–111(3)(i); The part of 173–400–111(8)(a)(v) that says, "and 173–460–040,"; 173–400–111(9).
173–400–112* ..	Requirements for New Sources in Nonattainment Areas—Review for Compliance with Regulations.	12/29/12	10/3/14 [Insert **Federal Register** citation].	Except: 173–400–112(8)
173–400–113* ..	New Sources in Attainment or Unclassifiable Areas—Review for Compliance with Regulations.	12/29/12	10/3/14 [Insert **Federal Register** citation].	Except: 173–400–113(3), second sentence.
173–400–118	Designation of Class I, II, and III Areas	12/29/12	10/3/14 [Insert **Federal Register** citation].	
173–400–151	Retrofit Requirements for Visibility Protection.	2/10/05	10/3/14 [Insert **Federal Register** citation].	
173–400–161	Compliance Schedules	3/22/91	6/2/95, 60 FR 28726.	
173–400–171* ..	Public Notice and Opportunity for Public Comment.	12/29/12	10/3/14 [Insert **Federal Register** citation].	Except: The part of 173–400–171(3)(b) that says, "or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173–460 WAC"; 173–400–171(12).
173–400–175	Public Information	2/10/05	10/3/14 [Insert **Federal Register** citation].	
173–400–190	Requirements for Nonattainment Areas	3/22/91	6/2/95, 60 FR 28726.	
173–400–200	Creditable Stack Height and Dispersion Techniques.	2/10/05	10/3/14 [Insert **Federal Register** citation].	
173–400–205	Adjustment for Atmospheric Conditions	3/22/91	6/2/95, 60 FR 28726.	
173–400–210	Emission Requirements of Prior Jurisdictions.	3/22/91	6/2/95, 60 FR 28726.	
173–400–220	Requirements for Board Members	3/22/91	6/2/95, 60 FR 28726.	
173–400–230	Regulatory Actions	3/20/93	6/2/95, 60 FR 28726.	
173–400–240	Criminal Penalties	3/22/91	6/2/95, 60 FR 28726.	
173–400–250	Appeals	9/20/93	6/2/95, 60 FR 28726.	
173–400–260	Conflict of Interest	3/22/91	6/2/95, 60 FR 28726.	
173–400–560* ..	General Order of Approval	12/29/12	10/3/14 [Insert **Federal Register** citation].	Except: The part of 173–400–560(1)(f) that says, "173–460 WAC".

*The EPA's approval of the WAC 173–400–110 through –113, 173–400–036, 173–400–171, and 173–400–560 is not a determination that these regulations meet requirements for major sources such as a SIP-approved PSD permitting program (40 CFR 51.166), a SIP-approved major NNSR permitting program (40 CFR 51.165), or a SIP-approved visibility program (40 CFR 51.307).

TABLE 3—ADDITIONAL REGULATIONS APPROVED FOR THE ENERGY FACILITIES SITE EVALUATION COUNCIL (EFSEC) JURISDICTION

[See the SIP-approved provisions of WAC 463–39–020 for jurisdictional applicability]

State citation	Title/subject	State effective date	EPA approval date	Explanations
Washington Administrative Code, Chapter 463–39—General Regulations for Air Pollution Sources				
463–39–005	Adoption by Reference	9/21/95	5/23/96, 61 FR 25791	except sections (2), (3) & (4).
463–39–010	Purpose	5/3/92	5/23/96, 61 FR 25791.	
463–39–020	Applicability	9/21/95	5/23/96, 61 FR 25791.	
463–39–030	Additional Definitions	9/21/95	5/23/96, 61 FR 25791.	
463–39–095	Permit Issuance	9/21/95	5/23/96, 61 FR 25791.	
463–39–100	Registration	12/11/93	5/23/96, 61 FR 25791.	
463–39–120	Monitoring and Special Report	9/21/95	5/23/96, 61 FR 25791.	
463–39–135	Criminal Penalties	8/6/79	5/23/96, 61 FR 25791.	
463–39–170	Conflict of Interest	8/6/79	5/23/96, 61 FR 25791.	
463–39–230	Regulatory Actions	8/26/94	5/23/96, 61 FR 25791	

TABLE 4—ADDITIONAL REGULATIONS APPROVED FOR THE BENTON CLEAN AIR AGENCY (BCAA) JURISDICTION

[Applicable in Benton County, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction and facilities subject to the applicability sections of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
Washington Department of Ecology Regulations				
Washington Administrative Code, Chapter 173–400—General Regulations for Air Pollution Sources				
173–400–010	Policy and Purpose	3/22/91	6/2/95, 60 FR 28726.	
173–400–020	Applicability	3/22/91	6/2/95, 60 FR 28726.	
173–400–030	Definitions	3/22/91	6/2/95, 60 FR 28726.	
173–400–040	General Standards for Maximum Emissions.	3/22/91	6/2/95, 60 FR 28726	except (1)(c), and (1)(d), (2), (4), and the 2nd paragraph of (6).
173–400–050	Emission Standards for Combustion and Incineration Units.	3/22/91	6/2/95, 60 FR 28726	except the exception provision in (3).
173–400–060	Emission Standards for General Process Units.	3/22/91	6/2/95, 60 FR 28726.	
173–400–070	Emission Standards for Certain Source Categories.	3/22/91	6/2/95, 60 FR 28726	except (7).
173–400–081	Startup and Shutdown	9/20/93	6/2/95, 60 FR 28726.	
173–400–091	Voluntary Limits on Emissions	9/20/93	6/2/95, 60 FR 28726	including all regulatory orders issued pursuant to this section.
173–400–100	Registration	9/20/93	6/2/95, 60 FR 28726.	
173–400–105	Records, Monitoring and Reporting	9/20/93	6/2/95, 60 FR 28726.	
173–400–107	Excess Emissions	9/20/93	6/2/95, 60 FR 28726.	
173–400–110	New Source Review (NSR)	9/20/93	6/2/95, 60 FR 28726.	
173–400–112	Requirements for New Sources in Nonattainment Areas.	9/20/93	6/2/95, 60 FR 28726	except (8).
173–400–113	Requirements for New Sources in Attainment or Unclassifiable Areas.	9/20/93	6/2/95, 60 FR 28726	except (5).
173–400–151	Retrofit Requirements for Visibility Protection.	3/22/91	6/2/95, 60 FR 28726.	
173–400–161	Compliance Schedules	3/22/91	6/2/95, 60 FR 28726.	
173–400–171	Public Involvement	9/20/93	6/2/95, 60 FR 28726.	
173–400–190	Requirements for Nonattainment Areas	3/22/91	6/2/95, 60 FR 28726.	
173–400–200	Creditable Stack Height & Dispersion Techniques.	3/22/91	6/2/95, 60 FR 28726.	
173–400–205	Adjustment for Atmospheric Conditions	3/22/91	6/2/95, 60 FR 28726.	
173–400–210	Emission Requirements of Prior Jurisdictions.	3/22/91	6/2/95, 60 FR 28726.	
173–400–220	Requirements for Board Members	3/22/91	6/2/95, 60 FR 28726.	
173–400–230	Regulatory Actions	3/20/93	6/2/95, 60 FR 28726.	
173–400–240	Criminal Penalties	3/22/91	6/2/95, 60 FR 28726.	
173–400–250	Appeals	9/20/93	6/2/95, 60 FR 28726.	
173–400–260	Conflict of Interest	3/22/91	6/2/95, 60 FR 28726	

TABLE 5—ADDITIONAL REGULATIONS APPROVED FOR THE NORTHWEST CLEAN AIR AGENCY (NWCAA) JURISDICTION

[Applicable in Island, Skagit and Whatcom counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction and facilities subject to the applicability sections of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
Washington Department of Ecology Regulations				
Washington Administrative Code, Chapter 173–400—General Regulations for Air Pollution Sources				
173–400–010	Policy and Purpose	3/22/91	6/2/95, 60 FR 28726.	
173–400–020	Applicability	3/22/91	6/2/95, 60 FR 28726.	
173–400–030	Definitions	3/22/91	6/2/95, 60 FR 28726.	
173–400–040	General Standards for Maximum Emissions.	3/22/91	6/2/95, 60 FR 28726	except (1)(c), and (1)(d), (2), (4), and the 2nd paragraph of (6).
173–400–050	Emission Standards for Combustion and Incineration Units.	3/22/91	6/2/95, 60 FR 28726	except the exception provision in (3).
173–400–060	Emission Standards for General Process Units.	3/22/91	6/2/95, 60 FR 28726.	
173–400–070	Emission Standards for Certain Source Categories.	3/22/91	6/2/95, 60 FR 28726	except (7).
173–400–081	Startup and Shutdown	9/20/93	6/2/95, 60 FR 28726.	
173–400–091	Voluntary Limits on Emissions	9/20/93	6/2/95, 60 FR 28726	including all regulatory orders issued pursuant to this section.
173–400–100	Registration	9/20/93	6/2/95, 60 FR 28726.	
173–400–105	Records, Monitoring and Reporting	9/20/93	6/2/95, 60 FR 28726.	
173–400–107	Excess Emissions	9/20/93	6/2/95, 60 FR 28726.	
173–400–110	New Source Review (NSR)	9/20/93	6/2/95, 60 FR 28726.	
173–400–112	Requirements for New Sources in Nonattainment Areas.	9/20/93	6/2/95, 60 FR 28726	except (8).
173–400–113	Requirements for New Sources in Attainment or Unclassifiable Areas.	9/20/93	6/2/95, 60 FR 28726	except (5).
173–400–151	Retrofit Requirements for Visibility Protection.	3/22/91	6/2/95, 60 FR 28726.	
173–400–161	Compliance Schedules	3/22/91	6/2/95, 60 FR 28726.	
173–400–171	Public Involvement	9/20/93	6/2/95, 60 FR 28726.	
173–400–190	Requirements for Nonattainment Areas	3/22/91	6/2/95, 60 FR 28726.	
173–400–200	Creditable Stack Height & Dispersion Techniques.	3/22/91	6/2/95, 60 FR 28726.	
173–400–205	Adjustment for Atmospheric Conditions	3/22/91	6/2/95, 60 FR 28726.	
173–400–210	Emission Requirements of Prior Jurisdictions.	3/22/91	6/2/95, 60 FR 28726.	
173–400–220	Requirements for Board Members	3/22/91	6/2/95, 60 FR 28726.	
173–400–230	Regulatory Actions	3/20/93	6/2/95, 60 FR 28726.	
173–400–240	Criminal Penalties	3/22/91	6/2/95, 60 FR 28726.	
173–400–250	Appeals	9/20/93	6/2/95, 60 FR 28726.	
173–400–260	Conflict of Interest	3/22/91	6/2/95, 60 FR 28726.	
Northwest Clean Air Agency Regulations				
General Provisions				
100	Name of Authority	9/8/93	2/22/95, 60 FR 9778.	
101	Short Title	9/8/93	2/22/95, 60 FR 9778.	
102	Policy	9/8/93	2/22/95, 60 FR 9778.	
103	Duties & Powers	9/8/93	2/22/95, 60 FR 9778.	
104	Adoption of State/Federal Laws and Rules	11/13/94	10/24/95, 60 FR 54439	except section 104.2.
105	Separability	9/8/93	2/22/95, 60 FR 9778.	
106	Public Records	9/8/93	2/22/95, 60 FR 9778.	
110	Investigation and Studies	9/8/93	2/22/95, 60 FR 9778.	
111	Interference or Obstruction	9/8/93	2/22/95, 60 FR 9778.	
112	False and Misleading Oral Statements	9/8/93	2/22/95, 60 FR 9778.	
113	Service of Notice	9/8/93	2/22/95, 60 FR 9778.	
114	Confidential Information	9/8/93	2/22/95, 60 FR 9778.	
120	Hearings	9/8/93	2/22/95, 60 FR 9778.	
121	Orders	9/8/93	2/22/95, 60 FR 9778.	
122	Appeals from Orders or Violations	9/8/93	2/22/95, 60 FR 9778.	
123	Status of Orders on Appeal	9/8/93	2/22/95, 60 FR 9778.	
124	Display of Orders	9/8/93	2/22/95, 60 FR 9778.	
130	Citations—Notices	9/8/93	2/22/95, 60 FR 9778.	
131	Violations—Notices	9/8/93	2/22/95, 60 FR 9778.	
132	Criminal Penalty	11/13/94	10/24/95, 60 FR 54439.	
133	Civil Penalty	11/13/94	10/24/95, 60 FR 54439.	
134	Restraining Orders—Injunction	9/8/93	2/22/95, 60 FR 9778.	

TABLE 5—ADDITIONAL REGULATIONS APPROVED FOR THE NORTHWEST CLEAN AIR AGENCY (NWCAA) JURISDICTION—Continued

[Applicable in Island, Skagit and Whatcom counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction and facilities subject to the applicability sections of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
135	Additional Enforcement—Compliance Schedules.	9/8/93	2/22/95, 60 FR 9778.	
140	Reporting by Government Agencies	9/8/93	2/22/95, 60 FR 9778.	
145	Motor Vehicle Owner Responsibility	9/8/93	2/22/95, 60 FR 9778.	
150	Pollutant Disclosure—Reporting by Air Containment Sources.	9/8/93	2/22/95, 60 FR 9778.	
180	Sampling and Analytical Methods/References.	9/8/93	2/22/95, 60 FR 9778.	
Definitions				
200	Definitions	11/13/94	10/24/95, 60 FR 54439.	
Control Procedures				
300	Notice of Construction When Required	11/13/94	10/24/95, 60 FR 54439.	
301	Information Required for Notice of Construction & Application for Approval, Public Notice, Public Hearing.	11/13/94	10/24/95, 60 FR 54439.	
302	Issuance of Approval or Order	11/13/94	10/24/95, 60 FR 54439.	
303	Notice of Completion—Notice of Violation	9/8/93	2/22/95, 60 FR 9778.	
310	Approval to Operate Required	9/8/93	2/22/95, 60 FR 9778.	
320	Registration Required	9/8/93	2/22/95, 60 FR 9778.	
321	General Requirements for Registration	9/8/93	2/22/95, 60 FR 9778.	
322	Exemptions from Registration	11/13/94	10/24/95, 60 FR 54439.	
323	Classes of Registration	9/8/93	2/22/95, 60 FR 9778.	
324	Fees	11/13/94	10/24/95, 60 FR 54439	except section 324.121.
325	Transfer	9/8/93	2/22/95, 60 FR 9778.	
340	Report of Breakdown and Upset	11/13/94	10/24/95, 60 FR 54439.	
341	Schedule Report of Shutdown or Start-Up	9/8/93	2/22/95, 60 FR 9778.	
342	Operation and Maintenance	9/8/93	2/22/95, 60 FR 9778.	
360	Testing and Sampling	9/8/93	2/22/95, 60 FR 9778.	
365	Monitoring	9/8/93	2/22/95, 60 FR 9778.	
366	Instrument Calibration	9/8/93	2/22/95, 60 FR 9778.	
Standards				
400	Ambient Air Standards—Forward	9/8/93	2/22/95, 60 FR 9778.	
401	Suspended Particulate Standards (PM–10)	9/8/93	2/22/95, 60 FR 9778.	
410	Sulfur Oxide Standards	9/8/93	2/22/95, 60 FR 9778.	
420	Carbon Monoxide Standards	9/8/93	2/22/95, 60 FR 9778.	
422	Nitrogen Oxide Standards	9/8/93	2/22/95, 60 FR 9778.	
424	Ozone Standards	9/8/93	2/22/95, 60 FR 9778.	
450	Emission Standards—Forward	9/8/93	2/22/95, 60 FR 9778.	
451	Emission of Air Contaminant—Visual Standards.	11/13/94	10/24/95, 60 FR 54439.	
452	Motor Vehicle Visual Standards	9/8/93	2/22/95, 60 FR 9778	except section 452.5.
455	Emission of Particulate Matter	9/8/93	2/22/95, 60 FR 9778.	
458	Incinerators—Wood Waste Burners	9/8/93	2/22/95, 60 FR 9778.	
460	Weight/Heat Rate Standard—Emission of Sulfur Compounds.	9/8/93	2/22/95, 60 FR 9778.	
462	Emission of Sulfur Compounds	11/13/94	10/24/95, 60 FR 54439.	
466	Portland Cement Plants	9/8/93	2/22/95, 60 FR 9778.	
Regulated Activities and Prohibitions				
510	Incinerator Burning	9/8/93	2/22/95, 60 FR 9778.	
520	Sulfur Compounds in Fuel	9/8/93	2/22/95, 60 FR 9778.	
550	Particulate Matter from Becoming Airborne	9/8/93	2/22/95, 60 FR 9778.	
560	Storage of Organic Liquids	9/8/93	2/22/95, 60 FR 9778.	
580	Volatile Organic Compound Control (VOC)	11/13/94	10/24/95, 60 FR 54439	

TABLE 6—ADDITIONAL REGULATIONS APPROVED FOR THE OLYMPIC REGION CLEAN AIR AGENCY (ORCAA) JURISDICTION

[Applicable in Clallam, Grays Harbor, Jefferson, Mason, Pacific, and Thurston counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction and facilities subject to the applicability sections of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
Washington Department of Ecology Regulations				
Washington Administrative Code, Chapter 173–400—General Regulations for Air Pollution Sources				
173–400–010	Policy and Purpose	3/22/91	6/2/95, 60 FR 28726.	
173–400–020	Applicability	3/22/91	6/2/95, 60 FR 28726.	
173–400–030	Definitions	3/22/91	6/2/95, 60 FR 28726.	
173–400–040	General Standards for Maximum Emissions.	3/22/91	6/2/95, 60 FR 28726	except (1)(c), and (1)(d), (2), (4), and the 2nd paragraph of (6).
173–400–050	Emission Standards for Combustion and Incineration Units.	3/22/91	6/2/95, 60 FR 28726	except the exception provision in (3).
173–400–060	Emission Standards for General Process Units.	3/22/91	6/2/95, 60 FR 28726.	
173–400–070	Emission Standards for Certain Source Categories.	3/22/91	6/2/95, 60 FR 28726	except (7).
173–400–081	Startup and Shutdown	9/20/93	6/2/95, 60 FR 28726.	
173–400–091	Voluntary Limits on Emissions	9/20/93	6/2/95, 60 FR 28726	including all regulatory orders issued pursuant to this section.
173–400–100	Registration	9/20/93	6/2/95, 60 FR 28726.	
173–400–105	Records, Monitoring and Reporting	9/20/93	6/2/95, 60 FR 28726.	
173–400–107	Excess Emissions	9/20/93	6/2/95, 60 FR 28726.	
173–400–110	New Source Review (NSR)	9/20/93	6/2/95, 60 FR 28726.	
173–400–112	Requirements for New Sources in Nonattainment Areas.	9/20/93	6/2/95, 60 FR 28726	except (8).
173–400–113	Requirements for New Sources in Attainment or Unclassifiable Areas.	9/20/93	6/2/95, 60 FR 28726	except (5).
173–400–151	Retrofit Requirements for Visibility Protection.	3/22/91	6/2/95, 60 FR 28726.	
173–400–161	Compliance Schedules	3/22/91	6/2/95, 60 FR 28726.	
173–400–171	Public Involvement	9/20/93	6/2/95, 60 FR 28726.	
173–400–190	Requirements for Nonattainment Areas	3/22/91	6/2/95, 60 FR 28726.	
173–400–200	Creditable Stack Height & Dispersion Techniques.	3/22/91	6/2/95, 60 FR 28726.	
173–400–205	Adjustment for Atmospheric Conditions	3/22/91	6/2/95, 60 FR 28726.	
173–400–210	Emission Requirements of Prior Jurisdictions.	3/22/91	6/2/95, 60 FR 28726.	
173–400–220	Requirements for Board Members	3/22/91	6/2/95, 60 FR 28726.	
173–400–230	Regulatory Actions	3/20/93	6/2/95, 60 FR 28726.	
173–400–240	Criminal Penalties	3/22/91	6/2/95, 60 FR 28726.	
173–400–250	Appeals	9/20/93	6/2/95, 60 FR 28726	
173–400–260	Conflict of Interest	3/22/91	6/2/95, 60 FR 28726	
Olympic Region Clean Air Agency Regulations				
Rule 6.2 Outdoor Burning				
6.2.3	No Residential or Land Clearing Burning ..	2/4/12	10/3/13, 78 FR 61188	Only as it applies to the cities of Olympia, Lacey, and Tumwater.
6.2.6	Curtailment	3/18/11	10/3/13, 78 FR 61188	
6.2.7	Recreational Burning	3/18/11	10/3/13, 78 FR 61188	
Rule 8.1 Wood Heating				
8.1.1	Definitions	5/22/10	10/3/13, 78 FR 61188.	
8.1.2 (b) and (c)	General Emission Standards	5/22/10	10/3/13, 78 FR 61188.	
8.1.3	Prohibited Fuel Types	5/22/10	10/3/13, 78 FR 61188.	
8.1.4	Curtailment	5/22/10	10/3/13, 78 FR 61188.	
8.1.5	Exceptions	5/22/10	10/3/13, 78 FR 61188.	
8.1.7	Sale and Installation of Uncertified Woodstoves.	5/22/10	10/3/13, 78 FR 61188.	
8.1.8	Disposal of Uncertified Woodstoves	5/22/10	10/3/13, 78 FR 61188	

TABLE 7—ADDITIONAL REGULATIONS APPROVED FOR THE PUGET SOUND CLEAN AIR AGENCY (PSCAA) JURISDICTION

[Applicable in King, Kitsap, Pierce and Snohomish counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction and facilities subject to the applicability sections of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
Washington Department of Ecology Regulations				
Washington Administrative Code, Chapter 173–400—General Regulations for Air Pollution Sources				
173–400–010	Policy and Purpose	3/22/91	6/2/95, 60 FR 28726.	
173–400–020	Applicability	3/22/91	6/2/95, 60 FR 28726.	
173–400–030	Definitions	3/22/91	6/2/95, 60 FR 28726.	
173–400–040	General Standards for Maximum Emissions.	3/22/91	6/2/95, 60 FR 28726	except (1)(c), and (1)(d), (2), (4), and the 2nd paragraph of (6).
173–400–050	Emission Standards for Combustion and Incineration Units.	3/22/91	6/2/95, 60 FR 28726	except the exception provision in (3).
173–400–060	Emission Standards for General Process Units.	3/22/91	6/2/95, 60 FR 28726.	
173–400–070	Emission Standards for Certain Source Categories.	3/22/91	6/2/95, 60 FR 28726	except (7).
173–400–081	Startup and Shutdown	9/20/93	6/2/95, 60 FR 28726.	
173–400–091	Voluntary Limits on Emissions	9/20/93	6/2/95, 60 FR 28726	including all regulatory orders issued pursuant to this section.
173–400–100	Registration	9/20/93	6/2/95, 60 FR 28726.	
173–400–105	Records, Monitoring and Reporting	9/20/93	6/2/95, 60 FR 28726.	
173–400–107	Excess Emissions	9/20/93	6/2/95, 60 FR 28726.	
173–400–110	New Source Review (NSR)	9/20/93	6/2/95, 60 FR 28726.	
173–400–112	Requirements for New Sources in Nonattainment Areas.	9/20/93	6/2/95, 60 FR 28726	except (8).
173–400–113	Requirements for New Sources in Attainment or Unclassifiable Areas.	9/20/93	6/2/95, 60 FR 28726	except (5).
173–400–151	Retrofit Requirements for Visibility Protection.	3/22/91	6/2/95, 60 FR 28726.	
173–400–161	Compliance Schedules	3/22/91	6/2/95, 60 FR 28726.	
173–400–171	Public Involvement	9/20/93	6/2/95, 60 FR 28726.	
173–400–190	Requirements for Nonattainment Areas	3/22/91	6/2/95, 60 FR 28726.	
173–400–200	Creditable Stack Height & Dispersion Techniques.	3/22/91	6/2/95, 60 FR 28726.	
173–400–205	Adjustment for Atmospheric Conditions	3/22/91	6/2/95, 60 FR 28726.	
173–400–210	Emission Requirements of Prior Jurisdictions.	3/22/91	6/2/95, 60 FR 28726.	
173–400–220	Requirements for Board Members	3/22/91	6/2/95, 60 FR 28726.	
173–400–230	Regulatory Actions	3/20/93	6/2/95, 60 FR 28726.	
173–400–240	Criminal Penalties	3/22/91	6/2/95, 60 FR 28726.	
173–400–250	Appeals	9/20/93	6/2/95, 60 FR 28726.	
173–400–260	Conflict of Interest	3/22/91	6/2/95, 60 FR 28726.	
Puget Sound Clean Air Agency Regulations				
Regulation I—Article 1: Policy, Short Title, and Definitions				
1.01	Policy	11/1/99	8/31/04, 69 FR 53007.	
1.03	Name of Agency	11/1/99	8/31/04, 69 FR 53007.	
1.05	Short Title	11/1/99	8/31/04, 69 FR 53007.	
1.07	Definitions	5/19/94	6/29/95, 60 FR 33734.	
Regulation I—Article 3: General Provisions				
3.04	Reasonably Available Control Technology	4/17/99	8/31/04, 69 FR 53007	except (e).
3.06	Credible Evidence	11/14/98	8/31/04, 69 FR 53007.	
Regulation I—Article 5: Registration				
5.02	Applicability and Purpose of the Registration Program.	11/1/96	8/6/97, 62 FR 42216.	
5.03	Registration Required	8/13/99	8/31/04, 69 FR 53007	except (a)(5).
5.05	General Reporting Requirements for Registration.	11/1/98	8/31/04, 69 FR 53007.	
Regulation I—Article 6: New Source Review				
6.03	Notice of Construction	11/1/96	8/6/97, 62 FR 42216.	
6.04	Notice of Construction Review Fees	11/1/97	4/21/98, 63 FR 19658.	
6.06	Public Notice	5/19/94	6/29/95, 60 FR 33734.	

TABLE 7—ADDITIONAL REGULATIONS APPROVED FOR THE PUGET SOUND CLEAN AIR AGENCY (PSCAA) JURISDICTION—Continued

[Applicable in King, Kitsap, Pierce and Snohomish counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction and facilities subject to the applicability sections of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
6.07	Order of Approval—Order to Prevent Construction.	5/19/94	6/29/95, 60 FR 33734.	
6.08	Emission Reduction Credit Banking	1/1/93	8/29/94, 59 FR 44324.	
6.09	Notice of Completion	5/19/94	6/29/95, 60 FR 33734	
6.10	Work Done without an Approval	11/1/97	4/21/98, 63 FR 19658.	
Regulation I—Article 7: Operating Permits				
7.09	General Reporting Requirements for Operating Permits	11/1/98	8/31/04, 69 FR 53007.	
Regulation I—Article 8: Outdoor Burning				
8.04	General Conditions for Outdoor Burning	1/1/01	8/31/04, 69 FR 53007.	
8.05	Agricultural Burning	1/1/01	8/31/04, 69 FR 53007.	
8.06	Outdoor Burning Ozone Contingency Measure.	1/23/03	8/5/04, 69 FR 47364.	
8.09	Description of King County No-Burn Area	1/1/01	8/31/04, 69 FR 53007.	
8.10	Description of Pierce County No-Burn Area.	1/1/01	8/31/04, 69 FR 53007.	
8.11	Description of Snohomish County No-Burn Area.	1/1/01	8/31/04, 69 FR 53007	
8.12	Description of Kitsap County No-Burn Area.	11/30/02	8/31/04, 69 FR 53007.	
Regulation I—Article 9: Emission Standards				
9.03	Emission of Air Contaminant: Visual Standard.	4/17/99	8/31/04, 69 FR 53007	except (e).
9.04	Opacity Standards for Equipment with Continuous Opacity Monitoring Systems.	6/1/98	8/31/04, 69 FR 53007	except (d)(2) & (f).
9.05	Refuse Burnin.	1/13/94	6/29/95, 60 FR 33734.	
9.07	Sulfur Dioxide Emission Standard	5/19/94	6/29/95, 60 FR 33734.	
9.08	Fuel Oil Standards	5/19/94	6/29/95, 60 FR 33734.	
9.09	Particulate Matter Emission Standards	6/1/98	8/31/04, 69 FR 53007.	
9.15	Fugitive Dust Control Measures	4/17/99	8/31/04, 69 FR 53007.	
9.16	Spray-Coating Operations	9/1/01	8/31/04, 69 FR 53007	
9.20	Maintenance of Equipment	6/9/88	8/29/94, 59 FR 44324.	
Regulation I—Article 12: Standards of Performance for Continuous Emission Monitoring Systems				
12.01	Applicability.	6/1/98	8/31/04, 69 FR 53007	
12.03	Continuous Emission Monitoring Systems	11/1/04	9/17/13, 78 FR 57073.	
Regulation I—Article 13: Solid Fuel Burning Device Standards				
13.01	Policy and Purpose	12/01/12	5/29/13, 78 FR 32131.	
13.02	Definitions	12/01/12	5/29/13, 78 FR 32131.	
13.03	Opacity Standards	12/01/12	5/29/13, 78 FR 32131.	
13.04	Prohibited Fuel Types	12/01/12	5/29/13, 78 FR 32131.	
13.05	Curtailment	12/01/12	5/29/13, 78 FR 32131.	
13.06	Emission Performance Standards	12/01/12	5/29/13, 78 FR 32131	
13.07	Contingency Plan	12/01/12	5/29/13, 78 FR 32131.	
Regulation II—Article 1: Purpose, Policy, Short Title, and Definitions				
1.01	Purpose	11/1/99	8/31/04, 69 FR 53007.	
1.02	Policy	11/1/99	8/31/04, 69 FR 53007.	
1.03	Short Title	11/1/99	8/31/04, 69 FR 53007.	
1.04	General Definitions	12/11/80	2/28/83, 48 FR 8273	
1.05	Special Definitions	9/1/03	9/17/13, 78 FR 57073.	
Regulation II—Article 2: Gasoline Marketing Emission Standards				
2.01	Definitions	8/13/99	8/31/04, 69 FR 53007.	
2.03	Petroleum Refineries	7/15/91	8/29/94, 59 FR 44324.	
2.05	Gasoline Loading Terminals	1/13/94	6/29/95, 60 FR 33734.	
2.06	Bulk Gasoline Plants	7/15/91	8/29/94, 59 FR 44324.	

TABLE 7—ADDITIONAL REGULATIONS APPROVED FOR THE PUGET SOUND CLEAN AIR AGENCY (PSCAA) JURISDICTION—Continued

[Applicable in King, Kitsap, Pierce and Snohomish counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction and facilities subject to the applicability sections of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
2.07	Gasoline Stations	1/10/00	8/31/04, 69 FR 53007.	
2.08	Gasoline Transport Tanks	8/13/99	8/31/04, 69 FR 53007.	
2.09	Oxygenated Gasoline Carbon Monoxide Contingency Measure and Fee Schedule.	1/23/03	8/5/04, 69 FR 47365.	
2.10	Gasoline Station Ozone Contingency Measure.	1/23/03	8/5/04, 69 FR 47365.	
Regulation II—Article 3: Miscellaneous Volatile Organic Compound Emission Standards				
3.01	Cutback Asphalt Paving	7/15/91	8/29/94, 59 FR 44324.	
3.02	Volatile Organic Compound Storage Tanks.	8/13/99	8/31/04, 69 FR 53007.	
3.03	Can and Paper Coating Operations	3/17/94	6/29/95, 60 FR 33734.	
3.04	Motor Vehicle and Mobile Equipment Coating Operations.	9/1/03	9/17/13, 78 FR 57073.	
3.05	Graphic Arts Systems	1/13/94	6/29/95, 60 FR 33734.	
3.08	Polyester, Vinylester, Gelcoat, and Resin Operations.	1/13/94	6/29/95, 60 FR 33734.	
3.09	Aerospace Component Coating Operations.	1/13/94	6/29/95, 60 FR 33734	

TABLE 8—ADDITIONAL REGULATIONS APPROVED FOR THE SOUTHWEST CLEAN AIR AGENCY (SWCAA) JURISDICTION

[Applicable in Clark, Cowlitz, Lewis, Skamania and Wahkiakum counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction and facilities subject to the applicability sections of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
Washington Department of Ecology Regulations				
Washington Administrative Code, Chapter 173–400—General Regulations for Air Pollution Sources				
173–400–010	Policy and Purpose	3/22/91	6/2/95, 60 FR 28726.	
173–400–020	Applicability	3/22/91	6/2/95, 60 FR 28726.	
173–400–030	Definitions	3/22/91	6/2/95, 60 FR 28726.	
173–400–040	General Standards for Maximum Emissions.	3/22/91	6/2/95, 60 FR 28726	except (1)(c), and (1)(d), (2), (4), and the 2nd paragraph of (6).
173–400–050	Emission Standards for Combustion and Incineration Units.	3/22/91	6/2/95, 60 FR 28726	except the exception provision in (3).
173–400–060	Emission Standards for General Process Units.	3/22/91	6/2/95, 60 FR 28726.	
173–400–070	Emission Standards for Certain Source Categories.	3/22/91	6/2/95, 60 FR 28726	except (7).
173–400–081	Startup and Shutdown	9/20/93	6/2/95, 60 FR 28726.	
173–400–091	Voluntary Limits on Emissions	9/20/93	6/2/95, 60 FR 28726	including all regulatory orders issued pursuant to this section.
173–400–100	Registration	9/20/93	6/2/95, 60 FR 28726.	
173–400–105	Records, Monitoring and Reporting	9/20/93	6/2/95, 60 FR 28726.	
173–400–107	Excess Emissions	9/20/93	6/2/95, 60 FR 28726.	
173–400–110	New Source Review (NSR)	9/20/93	6/2/95, 60 FR 28726.	
173–400–112	Requirements for New Sources in Nonattainment Areas.	9/20/93	6/2/95, 60 FR 28726	except (8).
173–400–113	Requirements for New Sources in Attainment or Unclassifiable Areas.	9/20/93	6/2/95, 60 FR 28726	except (5).
173–400–151	Retrofit Requirements for Visibility Protection.	3/22/91	6/2/95, 60 FR 28726.	
173–400–161	Compliance Schedules	3/22/91	6/2/95, 60 FR 28726.	
173–400–171	Public Involvement	9/20/93	6/2/95, 60 FR 28726.	
173–400–190	Requirements for Nonattainment Areas	3/22/91	6/2/95, 60 FR 28726.	
173–400–200	Creditable Stack Height & Dispersion Techniques.	3/22/91	6/2/95, 60 FR 28726.	
173–400–205	Adjustment for Atmospheric Conditions	3/22/91	6/2/95, 60 FR 28726.	
173–400–210	Emission Requirements of Prior Jurisdictions.	3/22/91	6/2/95, 60 FR 28726.	

TABLE 8—ADDITIONAL REGULATIONS APPROVED FOR THE SOUTHWEST CLEAN AIR AGENCY (SWCAA) JURISDICTION—Continued

[Applicable in Clark, Cowlitz, Lewis, Skamania and Wahkiakum counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction and facilities subject to the applicability sections of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
173–400–220	Requirements for Board Members	3/22/91	6/2/95, 60 FR 28726.	
173–400–230	Regulatory Actions	3/20/93	6/2/95, 60 FR 28726.	
173–400–240	Criminal Penalties	3/22/91	6/2/95, 60 FR 28726.	
173–400–250	Appeals	9/20/93	6/2/95, 60 FR 28726	
173–400–260	Conflict of Interest	3/22/91	6/2/95, 60 FR 28726.	
Southwest Clean Air Agency Regulations				
General Regulations for Air Pollution Sources				
400–010	Policy and Purpose	9/21/95	2/26/97, 62 FR 8624.	
400–020	Applicability	9/21/95	2/26/97, 62 FR 8624.	
400–030	Definitions	11/21/96	5/19/97, 62 FR 27204	except 2nd sentence in two subsections (14) & (49), subsection (84).
400–040	General Standards for Maximum Emissions.	9/21/95	2/26/97, 62 FR 8624	except (1)(c), and (1)(d), (2), (4), and the exception provision of (6)(a).
400–050	Emission Standards for Combustion and Incineration Units.	9/21/95	2/26/97, 62 FR 8624	except the exception provision in (3).
400–052	Stack Sampling of Major Combustion Sources.	9/21/95	2/26/97, 62 FR 8624.	
400–060	Emission Standards for General Process Units.	9/21/95	2/26/97, 62 FR 8624.	
400–070	Emission Standards for Certain Source Categories.	9/21/95	2/26/97, 62 FR 8624	except (5).
400–074	Gasoline Transport Tankers	9/21/95	2/26/97, 62 FR 8624.	
400–081	Startup and Shutdown	9/21/95	2/26/97, 62 FR 8624.	
400–090	Voluntary Limits on Emissions	11/8/93	5/3/95, 60 FR 21703.	
400–091	Voluntary Limits on Emissions	9/21/95	2/26/97, 62 FR 8624.	
400–100	Registration and Operating Permits	9/21/95	2/26/97, 62 FR 8624	except the first sentence of (3)(a)(iv) & (4).
400–101	Sources Exempt from Registration Requirements.	11/21/96	5/19/97, 62 FR 27204.	
400–105	Records, Monitoring and Reporting	9/21/95	2/26/97, 62 FR 8624.	
400–107	Excess Emissions	9/21/95	2/26/97, 62 FR 8624.	
400–109	Notice of Construction Application	11/21/96	5/19/97, 62 FR 27204	except subsections (3)(b), (3)(c), (3)(g), (3)(h), (3)(i).
400–110	New Source Review	11/21/96	5/19/97, 62 FR 27204.	
400–111	Requirements for Sources in a Maintenance Plan Area.	11/21/96	5/19/97, 62 FR 27204.	
400–112	Requirements for New Sources in Nonattainment Areas.	11/21/96	5/19/97, 62 FR 27204.	
400–113	Requirements for New Sources in Attainment or Nonclassifiable Areas.	11/21/96	5/19/97, 62 FR 27204.	
400–114	Requirements for Replacement or Substantial Alteration for Emission Control Technology at an Existing Stationary Source.	11/21/96	5/19/97, 62 FR 27204.	
400–116	Maintenance of Equipment	11/21/96	5/19/97, 62 FR 27204.	
400–151	Retrofit Requirements for Visibility Protection.	9/21/95	2/26/97, 62 FR 8624.	
400–161	Compliance Schedules	9/21/95	2/26/97, 62 FR 8624.	
400–171	Public Involvement	9/21/95	2/26/97, 62 FR 8624.	
400–190	Requirements for Nonattainment Areas	11/21/96	5/19/97, 62 FR 27204.	
400–200	Creditable Stack Height & Dispersion Techniques.	9/21/95	2/26/97, 62 FR 8624.	
400–205	Adjustment for Atmospheric Conditions	9/21/95	2/26/97, 62 FR 8624.	
400–210	Emission Requirements of Prior Jurisdictions.	9/21/95	2/26/97, 62 FR 8624.	
400–220	Requirements for Board Members	9/21/95	2/26/97, 62 FR 8624.	
400–230	Regulatory Actions & Civil Penalties	9/21/95	2/26/97, 62 FR 8624.	
400–240	Criminal Penalties	9/21/95	2/26/97, 62 FR 8624.	
400–250	Appeals	9/21/95	2/26/97, 62 FR 8624.	
400–260	Conflict of Interest	9/21/95	2/26/97, 62 FR 8624.	
400–270	Confidentiality of Records & Information ...	9/21/95	2/26/97, 62 FR 8624.	

TABLE 8—ADDITIONAL REGULATIONS APPROVED FOR THE SOUTHWEST CLEAN AIR AGENCY (SWCAA) JURISDICTION—Continued

[Applicable in Clark, Cowlitz, Lewis, Skamania and Wahkiakum counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction and facilities subject to the applicability sections of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
400–280	Powers of Authority	9/21/95	2/26/97, 62 FR 8624.	
	Emission Standards and Controls for Sources Emitting Volatile Organic Compounds			
490–010	Policy and Purpose	11/21/96	5/19/97, 62 FR 27204.	
490–020	Definitions	11/21/96	5/19/97, 62 FR 27204.	
490–025	General Applicability	11/21/96	5/19/97, 62 FR 27204.	
490–030	Registration and Reporting	11/21/96	5/19/97, 62 FR 27204.	
490–040	Requirements	11/21/96	5/19/97, 62 FR 27204.	
490–080	Exceptions & Alternative Methods	11/21/96	5/19/97, 62 FR 27204.	
490–090	New Source Review	11/21/96	5/19/97, 62 FR 27204.	
490–200	Petroleum Refinery Equipment Leaks	11/21/96	5/19/97, 62 FR 27204.	
490–201	Petroleum Liquid Storage in External Floating Roof Tanks.	11/21/96	5/19/97, 62 FR 27204.	
490–202	Leaks from Gasoline Transport Tanks and Vapor Collection Systems.	11/21/96	5/19/97, 62 FR 27204.	
490–203	Perchloroethylene Dry Cleaning Systems	11/21/96	5/19/97, 62 FR 27204.	
490–204	Graphic Arts Systems	11/21/96	5/19/97, 62 FR 27204.	
490–205	Surface Coating of Miscellaneous Metal Parts and Products.	11/21/96	5/19/97, 62 FR 27204.	
490–207	Surface Coating of Flatwood Paneling	11/21/96	5/19/97, 62 FR 27204.	
490–208	Aerospace Assembly & Component Coating Operations.	11/21/96	5/19/97, 62 FR 27204.	
	Emissions Standards and Controls for Sources Emitting Gasoline Vapors			
491–010	Policy and Purpose	11/21/96	5/19/97, 62 FR 27204.	
491–015	Applicability	11/21/96	5/19/97, 62 FR 27204.	
491–020	Definitions	11/21/96	5/19/97, 62 FR 27204.	
491–030	Registration	11/21/96	5/19/97, 62 FR 27204.	
491–040	Gasoline Vapor Control Requirements	11/21/96	5/19/97, 62 FR 27204.	
491–050	Failures, Certification, Testing & Recordkeeping.	11/21/96	5/19/97, 62 FR 27204.	
491–060	Severability	11/21/96	5/19/97, 62 FR 27204.	
	Oxygenated Fuels			
492–010	Policy and Purpose	11/21/96	4/30/97, 62 FR 23363.	
492–020	Applicability	11/21/96	4/30/97, 62 FR 23363.	
492–030	Definitions	11/21/96	4/30/97, 62 FR 23363.	
492–040	Compliance Requirements	11/21/96	4/30/97, 62 FR 23363.	
492–050	Registration Requirements	11/21/96	4/30/97, 62 FR 23363.	
492–060	Labeling Requirements	11/21/96	4/30/97, 62 FR 23363.	
492–070	Control Area and Control Period	11/21/96	4/30/97, 62 FR 23363.	
492–080	Enforcement and Compliance	11/21/96	4/30/97, 62 FR 23363.	
492–090	Unplanned Conditions	11/21/96	4/30/97, 62 FR 23363.	
492–100	Severability	11/21/96	4/30/97, 62 FR 23363.	
	VOC Area Source Rules			
493–100	Consumer Products (Reserved)	05/26/96	5/19/97, 62 FR 27204.	
493–200–010	Applicability	05/26/96	5/19/97, 62 FR 27204.	
493–200–020	Definitions	05/26/96	5/19/97, 62 FR 27204.	
493–200–030	Spray Paint Standards & Exemptions	05/26/96	5/19/97, 62 FR 27204.	
493–200–040	Requirements for Manufacture, Sale and Use of Spray Paint.	05/26/96	5/19/97, 62 FR 27204.	
493–200–050	Recordkeeping & Reporting Requirements	05/26/96	5/19/97, 62 FR 27204.	
493–200–060	Inspection and Testing Requirements	05/26/96	5/19/97, 62 FR 27204.	
493–300–010	Applicability	5/26/96	5/19/97, 62 FR 27204.	
493–300–020	Definitions	5/26/96	5/19/97, 62 FR 27204.	
493–300–030	Standards	5/26/96	5/19/97, 62 FR 27204.	
493–300–040	Requirements for Manufacture, Sale and Use of Architectural Coatings.	5/26/96	5/19/97, 62 FR 27204.	
493–300–050	Recordkeeping & Reporting Requirements	5/26/96	5/19/97, 62 FR 27204.	
493–300–060	Inspection and Testing Requirements	5/26/96	5/19/97, 62 FR 27204.	
493–400–010	Applicability	05/26/96	5/19/97, 62 FR 27204.	
493–400–020	Definitions	05/26/96	5/19/97, 62 FR 27204.	

TABLE 8—ADDITIONAL REGULATIONS APPROVED FOR THE SOUTHWEST CLEAN AIR AGENCY (SWCAA) JURISDICTION—Continued

[Applicable in Clark, Cowlitz, Lewis, Skamania and Wahkiakum counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction and facilities subject to the applicability sections of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
493–400–030	Coating Standards & Exemptions	05/26/96	5/19/97, 62 FR 27204.	
493–400–040	Requirements for Manufacture & Sale of Coating.	05/26/96	5/19/97, 62 FR 27204.	
493–400–050	Requirements for Motor Vehicle Refinishing in Vancouver AQMA.	05/26/96	5/19/97, 62 FR 27204.	
493–400–060	Recordkeeping and Reporting Requirements.	05/26/96	5/19/97, 62 FR 27204.	
493–400–070	Inspection & Testing Requirements	05/26/96	5/19/97, 62 FR 27204.	
493–500–010	Applicability	05/26/96	5/19/97, 62 FR 27204.	
493–500–020	Compliance Extensions	05/26/96	5/19/97, 62 FR 27204.	
493–500–030	Exemption from Disclosure to the Public ...	05/26/96	5/19/97, 62 FR 27204.	
493–500–040	Future Review	05/26/96	5/19/97, 62 FR 27204	

TABLE 9—ADDITIONAL REGULATIONS APPROVED FOR THE SPOKANE REGIONAL CLEAN AIR AGENCY (SRCAA) JURISDICTION

[Applicable in Spokane County, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction and facilities subject to the applicability sections of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
Washington Department of Ecology Regulations				
Washington Administrative Code, Chapter 173–400—General Regulations for Air Pollution Sources				
173–400–010	Policy and Purpose	3/22/91	6/2/95, 60 FR 28726.	
173–400–020	Applicability	3/22/91	6/2/95, 60 FR 28726.	
173–400–030	Definitions	3/22/91	6/2/95, 60 FR 28726.	
173–400–040	General Standards for Maximum Emissions.	3/22/91	6/2/95, 60 FR 28726	except (1)(c), and (1)(d), (2), (4), and the 2nd paragraph of (6).
173–400–050	Emission Standards for Combustion and Incineration Units.	3/22/91	6/2/95, 60 FR 28726	except the exception provision in (3).
173–400–060	Emission Standards for General Process Units.	3/22/91	6/2/95, 60 FR 28726.	
173–400–070	Emission Standards for Certain Source Categories.	3/22/91	6/2/95, 60 FR 28726	except (7).
173–400–081	Startup and Shutdown	9/20/93	6/2/95, 60 FR 28726.	
173–400–091	Voluntary Limits on Emissions	9/20/93	6/2/95, 60 FR 28726	including all regulatory orders issued pursuant to this section.
173–400–100	Registration	9/20/93	6/2/95, 60 FR 28726.	
173–400–105	Records, Monitoring and Reporting	9/20/93	6/2/95, 60 FR 28726.	
173–400–107	Excess Emissions	9/20/93	6/2/95, 60 FR 28726.	
173–400–110	New Source Review (NSR)	9/20/93	6/2/95, 60 FR 28726.	
173–400–112	Requirements for New Sources in Nonattainment Areas.	9/20/93	6/2/95, 60 FR 28726	except (8).
173–400–113	Requirements for New Sources in Attainment or Unclassifiable Areas.	9/20/93	6/2/95, 60 FR 28726	except (5).
173–400–151	Retrofit Requirements for Visibility Protection.	3/22/91	6/2/95, 60 FR 28726.	
173–400–161	Compliance Schedules	3/22/91	6/2/95, 60 FR 28726.	
173–400–171	Public Involvement	9/20/93	6/2/95, 60 FR 28726.	
173–400–190	Requirements for Nonattainment Areas	3/22/91	6/2/95, 60 FR 28726.	
173–400–200	Creditable Stack Height & Dispersion Techniques.	3/22/91	6/2/95, 60 FR 28726.	
173–400–205	Adjustment for Atmospheric Conditions	3/22/91	6/2/95, 60 FR 28726.	
173–400–210	Emission Requirements of Prior Jurisdictions.	3/22/91	6/2/95, 60 FR 28726.	
173–400–220	Requirements for Board Members	3/22/91	6/2/95, 60 FR 28726.	
173–400–230	Regulatory Actions	3/20/93	6/2/95, 60 FR 28726.	
173–400–240	Criminal Penalties	3/22/91	6/2/95, 60 FR 28726.	
173–400–250	Appeals	9/20/93	6/2/95, 60 FR 28726.	
173–400–260	Conflict of Interest	3/22/91	6/2/95, 60 FR 28726.	

TABLE 9—ADDITIONAL REGULATIONS APPROVED FOR THE SPOKANE REGIONAL CLEAN AIR AGENCY (SRCAA) JURISDICTION—Continued

[Applicable in Spokane County, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction and facilities subject to the applicability sections of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
Spokane Regional Clean Air Agency Regulations				
Regulation I—Article VI—Emissions Prohibited				
6.05	Particulate Matter & Preventing Particulate Matter from becoming Airborne.	11/12/93	1/27/97, 62 FR 3800.	
6.14	Standards for Control of Particulate Matter on Paved Surfaces.	2/13/99	4/12/99, 64 FR 17545.	
6.15	Standards for Control of Particulate Matter on Unpaved Roads.	2/13/99	4/12/99, 64 FR 17545.	
6.16	Motor Fuel Specifications for Oxygenated Gasoline.	7/6/95	9/22/97, 62 FR 49442*	*correction: 12/31/97, 62 FR 68187.
Regulation I—Article VIII—Solid Fuel Burning Device Standards				
8.01	Purpose	9/10/94	1/27/97, 62 FR 3800.	
8.02	Applicability	9/10/94	1/27/97, 62 FR 3800.	
8.03	Definitions	9/10/94	1/27/97, 62 FR 3800.	
8.04	Emission Performance Standards	9/10/94	1/27/97, 62 FR 3800.	
8.05	Opacity Standards	9/10/94	1/27/97, 62 FR 3800.	
8.06	Prohibited Fuel Types	9/10/94	1/27/97, 62 FR 3800.	
8.07	Curtailment	9/10/94	1/27/97, 62 FR 3800.	
8.08	Exemptions	9/10/94	1/27/97, 62 FR 3800.	
8.09	Procedure to Geographically Limit Solid Fuel Burning Devices.	9/10/94	1/27/97, 62 FR 3800.	
8.10	Restrictions on Installation of Solid Fuel Burning Devices.	9/10/94	1/27/97, 62 FR 3800.	
8.11	Regulatory Actions and Penalties	9/10/94	1/27/97, 62 FR 3800.	
Regulation II—Article IV—Emissions Prohibited				
4.01	Particulate Emissions—Grain Loading Restrictions.	4/26/79	6/5/80, 45 FR 37821	

TABLE 10—ADDITIONAL REGULATIONS APPROVED FOR THE YAKIMA REGIONAL CLEAN AIR AGENCY (YRCAA) JURISDICTION

[Applicable in Yakima County, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction and facilities subject to the applicability sections of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
Washington Department of Ecology Regulations				
Washington Administrative Code, Chapter 173–400—General Regulations for Air Pollution Sources				
173–400–010	Policy and Purpose	3/22/91	6/2/95, 60 FR 28726.	
173–400–020	Applicability	3/22/91	6/2/95, 60 FR 28726.	
173–400–030	Definitions	3/22/91	6/2/95, 60 FR 28726.	
173–400–040	General Standards for Maximum Emissions.	3/22/91	6/2/95, 60 FR 28726	except (1)(c), and (1)(d), (2), (4), and the 2nd paragraph of (6).
173–400–050	Emission Standards for Combustion and Incineration Units.	3/22/91	6/2/95, 60 FR 28726	except the exception provision in (3).
173–400–060	Emission Standards for General Process Units.	3/22/91	6/2/95, 60 FR 28726.	
173–400–070	Emission Standards for Certain Source Categories.	3/22/91	6/2/95, 60 FR 28726	except (7).
173–400–081	Startup and Shutdown	9/20/93	6/2/95, 60 FR 28726.	
173–400–091	Voluntary Limits on Emissions	9/20/93	6/2/95, 60 FR 28726	including all regulatory orders issued pursuant to this section.
173–400–100	Registration	9/20/93	6/2/95, 60 FR 28726.	
173–400–105	Records, Monitoring and Reporting	9/20/93	6/2/95, 60 FR 28726.	
173–400–107	Excess Emissions	9/20/93	6/2/95, 60 FR 28726.	
173–400–110	New Source Review (NSR)	9/20/93	6/2/95, 60 FR 28726.	

TABLE 10—ADDITIONAL REGULATIONS APPROVED FOR THE YAKIMA REGIONAL CLEAN AIR AGENCY (YRCAA) JURISDICTION—Continued

[Applicable in Yakima County, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction and facilities subject to the applicability sections of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
173–400–112	Requirements for New Sources in Non-attainment Areas.	9/20/93	6/2/95, 60 FR 28726	except (8).
173–400–113	Requirements for New Sources in Attainment or Unclassifiable Areas.	9/20/93	6/2/95, 60 FR 28726	except (5).
173–400–151	Retrofit Requirements for Visibility Protection.	3/22/91	6/2/95, 60 FR 28726.	
173–400–161	Compliance Schedules	3/22/91	6/2/95, 60 FR 28726.	
173–400–171	Public Involvement	9/20/93	6/2/95, 60 FR 28726.	
173–400–190	Requirements for Nonattainment Areas	3/22/91	6/2/95, 60 FR 28726.	
173–400–200	Creditable Stack Height & Dispersion Techniques.	3/22/91	6/2/95, 60 FR 28726.	
173–400–205	Adjustment for Atmospheric Conditions	3/22/91	6/2/95, 60 FR 28726.	
173–400–210	Emission Requirements of Prior Jurisdictions.	3/22/91	6/2/95, 60 FR 28726.	
173–400–220	Requirements for Board Members	3/22/91	6/2/95, 60 FR 28726.	
173–400–230	Regulatory Actions	3/20/93	6/2/95, 60 FR 28726.	
173–400–240	Criminal Penalties	3/22/91	6/2/95, 60 FR 28726.	
173–400–250	Appeals	9/20/93	6/2/95, 60 FR 28726	
173–400–260	Conflict of Interest	3/22/91	6/2/95, 60 FR 28726	
Yakima Regional Clean Air Agency Regulations				
Article I—Policy, Short Title and Definitions				
1.01	Policy	12/15/95	2/2/98, 63 FR 5269.	
1.02	Short Title	11/18/93	2/2/98, 63 FR 5269	
1.03	Definitions	12/15/95	2/2/98, 63 FR 5269	
Article II—General Provisions				
2.02	Control Officer- Powers & Duties	11/18/93	2/2/98, 63 FR 5269.	
2.03	Miscellaneous Provisions	11/18/93	2/2/98, 63 FR 5269.	
2.04	Confidentiality	11/18/93	2/2/98, 63 FR 5269	
2.05	Advisory Council	11/18/93	2/2/98, 63 FR 5269	
Article III—Violations—Orders and Hearings				
3.01	Notice of Violation—Corrective Action Hearings.	11/18/93	2/2/98, 63 FR 5269.	
3.02	Finality of Order	11/18/93	2/2/98, 63 FR 5269.	
3.03	Stay of Order Pending Appeal	11/18/93	2/2/98, 63 FR 5269	
3.04	Voluntary Compliance	11/18/93	2/2/98, 63 FR 5269	
Article IV—Registration and Notice of Construction				
4.01	Registration	12/15/95	2/2/98, 63 FR 5269.	
4.02	Notice of Construction	12/15/95	2/2/98, 63 FR 5269	
4.03	Exceptions to Article 4	11/18/93	2/2/98, 63 FR 5269	
Article V—Emissions Standards and Preventative Measures				
5.01	Outdoor Burning	12/15/95	2/2/98, 63 FR 5269.	
5.02	Regulations Applicable to all Outdoor Burning.	12/15/95	2/2/98, 63 FR 5269.	
5.03	Regulations Applicable to all Outdoor Burning within Jurisdiction of the Yakima County Clean Air Authority, Local Cities, Towns, Fire Protection Districts and Conservation Districts.	12/15/95	2/2/98, 63 FR 5269.	
5.04	Regulations Applicable to Permits Issued by the Yakima County Clean Air Authority for all Other Outdoor Burning.	12/15/95	2/2/98, 63 FR 5269.	
5.05	Additional Restrictions on Outdoor Burning	12/15/95	2/2/98, 63 FR 5269.	
5.06	General Standards for Maximum Permissible Emissions.	12/15/95	2/2/98, 63 FR 5269.	
5.07	Minimum Emission Standards for Combustion and Incineration Sources.	12/15/95	2/2/98, 63 FR 5269.	

TABLE 10—ADDITIONAL REGULATIONS APPROVED FOR THE YAKIMA REGIONAL CLEAN AIR AGENCY (YRCAA) JURISDICTION—Continued

[Applicable in Yakima County, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction and facilities subject to the applicability sections of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
5.08	Minimum Emissions Standards for General Process Sources.	12/15/95	2/2/98, 63 FR 5269.	
5.10	Sensitive Area Designation	6/20/94	2/2/98, 63 FR 5269.	
5.11	Monitoring and Special Reporting	12/15/95	2/2/98, 63 FR 5269	
5.12	Preventive Measures	11/18/93	2/2/98, 63 FR 5269	
Article VIII—Penalty and Severability				
8.01	Penalty for Violation	11/18/93	2/2/98, 63 FR 5269.	
8.02	Additional/Alternative Penalties	12/15/95	2/2/98, 63 FR 5269.	
8.03	Assurance of Discontinuance	11/18/93	2/2/98, 63 FR 5269.	
8.04	Restraining Order—Injunctions	11/18/93	2/2/98, 63 FR 5269	
8.05	Severability	12/15/95	2/2/98, 63 FR 5269	
Article IX—Woodstoves and Fireplaces				
9.01	Policy	11/18/93	2/2/98, 63 FR 5269.	
9.02	Opacity	11/18/93	2/2/98, 63 FR 5269.	
9.03	Prohibitive Fuel Types	11/18/93	2/2/98, 63 FR 5269.	
9.04	Limitations of Sales of Solid Fuel Burning Devices.	11/18/93	2/2/98, 63 FR 5269	
9.05	Prohibition of Visible Emissions During Air Pollution Episodes.	12/15/95	2/2/98, 63 FR 5269	
Article XII—Adoption of State and Federal Regulations				
12.01	State Regulations	12/15/95	2/2/98, 63 FR 5269	
Article XIII—Fee Schedules and Other Charges				
13.01	Registration and Fee Schedule	1/13/94	2/2/98, 63 FR 5269.	
13.02	Notice of Construction Fee Schedule	6/20/94	2/2/98, 63 FR 5269.	
13.03	Outdoor Burning Permit Fees	6/20/94	2/2/98, 63 FR 5269.	

* * * * *

[FR Doc. 2014–23016 Filed 10–2–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2013–0694; FRL 9917–34-Region 5]

Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) and 2006 $PM_{2.5}$ NAAQS; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendments.

SUMMARY: The Environmental Protection Agency (EPA) published a final rule in the **Federal Register** on June 2, 2014, updating 40 CFR part 81, ''Designation of Areas for Air Quality Planning Purposes'' for the 1997 and 2006 $PM_{2.5}$ NAAQS nonattainment areas. An error in the table for the Wisconsin 2006 24-hour $PM_{2.5}$ NAAQS in 40 CFR 81.350 is identified and corrected in this action.

DATES: This final rule is effective on October 3, 2014.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328, *panos.christos@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published a final rule document on June 2, 2014, (79 FR 31566) updating 40 CFR part 81, ''Designation of Areas for Air Quality Planning Purposes'' for the 1997 and 2006 $PM_{2.5}$ NAAQS nonattainment areas. This final rule included revisions to 40 CFR 81.350 to remove the tables titled ''Wisconsin—$PM_{2.5}$ (Annual NAAQS)'' and ''Wisconsin—$PM_{2.5}$ [24-hour NAAQS]'' and to add three tables titled ''Wisconsin—1997 Annual $PM_{2.5}$ NAAQS (Primary and Secondary)'' and ''Wisconsin—1997 24-hour $PM_{2.5}$ NAAQS (Primary and Secondary)'' and ''Wisconsin—2006 24-hour $PM_{2.5}$ NAAQS (Primary and Secondary)''. The entry for the Milwaukee-Racine designated area in the Wisconsin—2006 24-hour $PM_{2.5}$ NAAQS table erroneously indicated that the area was designated as nonattainment when, in fact, the area had been redesignated to attainment status on April 22, 2014. 79 FR 22415. Therefore, the entry for the Milwaukee-Racine area is being corrected to reflect the correct attainment designation.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: September 22, 2014.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 81 is corrected by making the following correcting amendments:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. Section 81.350 is amended by revising the entry for Milwaukee-Racine, WI in the table entitled ''Wisconsin—$PM_{2.5}$ (24-Hour NAAQS)'' to read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN–2006—24-HOUR $PM_{2.5}$ NAAQS

[Primary and Secondary]

Designated area	Designation[a]		Classification	
	Date[1]	Type	Date[2]	Type
Milwaukee-Racine, WI:				
Milwaukee County	April 22, 2014	Attainment		
Racine County	April 22, 2014	Attainment		
Waukesha County	April 22, 2014	Attainment		
* * *	*	* *	*	

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 30 days after November 13, 2009, unless otherwise noted.
[2] This date is July 2, 2014, unless otherwise noted.

[FR Doc. 2014–23634 Filed 10–2–14; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 412, 413, 415, 422, 424, 485, and 488

[CMS–1607–CN]

RINs 0938–AS11; 0938–AR12; and 0938–AR53

Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2015 Rates; Quality Reporting Requirements for Specific Providers; Reasonable Compensation Equivalents for Physician Services in Excluded Hospitals and Certain Teaching Hospitals; Provider Administrative Appeals and Judicial Review; Enforcement Provisions for Organ Transplant Centers; and Electronic Health Record (EHR) Incentive Program; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical and typographical errors in the final rule that appeared in the August 22, 2014 **Federal Register** titled ''Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2015 Rates; Quality Reporting Requirements for Specific Providers; Reasonable Compensation Equivalents for Physician Services in Excluded Hospitals and Certain Teaching Hospitals; Provider Administrative Appeals and Judicial Review; Enforcement Provisions for Organ Transplant Centers; and Electronic Health Record (EHR) Incentive Program.''

DATES: *Effective date:* This document is effective October 1, 2014.

FOR FURTHER INFORMATION CONTACT: Ing Jye Cheng, (410) 786–4487, Operating Prospective Payment, Capital Prospective Payment, and New Medical Service and Technology Add-On Payment Corrections.

Donald Thompson, (410) 786–6504, Operating Prospective Payment, Wage Index, and Capital Prospective Payment Corrections.

James Poyer, (410) 786–2261, PPS-Exempt Cancer Hospital Quality Reporting and Hospital Inpatient Quality Reporting Corrections.

Mary Pratt, (410) 786–2261, Long-term Care Hospital Quality Data Reporting Corrections.

Kellie Shannon, (410) 786–0416, Administrative Appeals by Providers and Judicial Review Corrections.

Thomas Hamilton, (410) 786–6763, Organ Transplant Center Corrections.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2014–18545 which appeared in the August 22, 2014 **Federal Register** (79 FR 49853), titled ''Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2015 Rates; Quality Reporting Requirements for Specific Providers; Reasonable Compensation Equivalents for Physician Services in Excluded Hospitals and Certain Teaching Hospitals; Provider Administrative Appeals and Judicial Review; Enforcement Provisions for Organ Transplant Centers; and Electronic Health Record (EHR) Incentive Program'' (hereinafter referred to as the FY 2015 IPPS/LTCH PPS final rule), there were a number of technical errors that are identified and corrected in section IV. of this correcting document. The provisions in this correction document are effective as if they had been included in the FY 2015 IPPS/LTCH PPS final rule that appeared in the August 22, 2014 **Federal Register**. Accordingly, the corrections are effective October 1, 2014.

II. Summary of Errors and Corrections to Tables Posted on the CMS Web Site

A. Summary of Errors in the Preamble

On page 49865, in our discussion of the summary of costs and benefits of the payment adjustment of the Hospital-Acquired Condition (HAC) Reduction Program for FY 2015, we made a technical error in the amount by which overall payments would decrease.

On page 49918, in our discussion of new technology add-on payments, we made an error in the amount of the maximum add-on payment for Voraxaze®.

On page 49940, we made an error in our discussion of the FY 2015 new technology add-on payment for the

CardioMEMS™ HF (Heart Failure) Monitoring System.

On pages 50246 through 50249, in the table titled ''Previously Adopted Hospital IQR Program Measures And Measures Newly Finalized in this Final Rule for the FY 2017 Payment Determination and Subsequent Years,'' we inadvertently listed VTE–3 as a ''voluntary electronic clinical quality measure'' only and inadvertently omitted PN–6 from the table, which should have been listed as a voluntary electronic clinical quality measure.

On pages 50279 and 52084, in our discussion of the PPS-exempt Cancer Hospital Quality Reporting Program (PCHQR), we provided a Web site link that is not functional due to a typographical error, and made other typographical and technical errors.

On pages 50298, 50302, and 50306, we made typographical and technical errors in our discussion of the Long-Term Care Hospital Quality Reporting (LTCHQR) Program.

On page 50335, we made typographical and technical errors in our discussion of organ transplant centers.

B. Summary of Errors in the Regulations Text

On page 50350, in the regulations text at § 405.1811(c) and § 405.1835(c), we made technical errors in specifying the requirements regarding a provider's right to contractor or Board hearings resulting from untimely contractor determinations.

C. Summary of Errors in the Addendum

In calculating the final FY 2015 IPPS operating and capital rates and impacts, we made two technical errors.

First, there was a technical error in our determination of payments under the postacute care transfer policy for certain MS–DRGs within the ratesetting process. Specifically, we inadvertently did not treat those MS–DRGs that qualified for a special payment under the postacute care transfer policy (see § 412.4(f)(6)) in FY 2015 as MS–DRGs subject to the postacute care transfer policy. Consequently, the FY 2015 transfer-adjusted case-mix indexes and cases used to model IPPS payments in the ratesetting process were incorrect, and resulted in a miscalculation of the operating and capital IPPS budget neutrality factors, outlier threshold, operating standardized amounts, capital Federal rates, and impacts for the FY 2015 IPPS/LTCH PPS final rule. To conform with our established methodology, we are recalculating the FY 2015 transfer-adjusted case-mix indexes and cases used to model IPPS payments in the ratesetting process after properly treating those MS–DRGs that qualified for a special payment under the postacute care transfer policy in FY 2015 as MS–DRGs subject to the postacute care transfer policy. Therefore, we are recalculating the operating and capital IPPS budget neutrality factors, outlier threshold, operating standardized amounts, capital Federal rates, and impacts for FY 2015 using our established methodology.

The second error was the inadvertent error in identifying claims for indirect medical education (IME) payments for Medicare Advantage (MA) beneficiaries (MA IME claims) in the ratesetting process for the FY 2015 IPPS/LTCH PPS final rule. Per the methodology established in the FY 2011 IPPS/LTCH PPS final rule (75 FR 50422 through 50433), in order to identify IME MA claims, we first search the MedPAR file for all claims with an IME payment greater than zero. Then, we filter these claims for a subset of claims with a group health organization (GHO) paid indicator with a value of ''1'' or with the IME payment field equal to the DRG payment field. For the reasons described later in this section, in applying this methodology for the FY 2015 IPPS/LTCH PPS final rule, we did not identify certain MA IME claims using the filter for claims where the IME payment field is equal to the DRG payment field.

The Budget Control Act of 2011 requires mandatory across-the-board reductions in Federal spending, also known as sequestration. The American Taxpayer Relief Act of 2012 postponed sequestration for 2 months. As required by law, President Obama issued a sequestration order on March 1, 2013.

For FY 2015, we used claims from the FY 2013 MedPAR in our ratesetting process to determine the operating and capital IPPS budget neutrality factors, outlier threshold, operating standardized amounts, capital Federal rates, and the IPPS impact analyses presented in the FY 2015 IPPS/LTCH PPS final rule. Claims for discharges occurring on or after April 1, 2013 had the 2-percent reduction for sequestration applied to the DRG payment field. As a result, in applying the methodology described previously for the FY 2015 IPPS/LTCH PPS final rule, we inadvertently did not properly identify certain claims for IME MA payments because the DRG payment field reflected the 2-percent reduction for sequestration (and therefore, the IME payment field did not equal the DRG payment field for those claims). As discussed in the FY 2015 IPPS/LTCH PPS final rule (79 FR 50364 and 50365), under our established methodology, payments for MA IME claims are used in our operating IPPS budget neutrality calculations. Therefore, the inadvertent omission of these MA IME claims resulted in a miscalculation of the operating budget neutrality calculations. (We note this error did not affect the calculation of the outlier threshold or the MS–DRG relative weights because, under our established methodology for the respective calculations of these IPPS payment factors, we only include claims with a ''Claim Type'' of 60, and the claims that were not properly identified as MA IME claims did not have a ''Claim Type'' of 60.) We are recalculating the operating budget neutrality factors that are used to determine the standardized amounts for FY 2015 to conform with our established methodology as stated in the FY 2015 IPPS/LTCH PPS final rule. Specifically, for this correcting document, we are restoring the 2-percent reduction for sequestration to the DRG payment field in order to ensure that we properly identify all claims where the IME payment field is equal to the DRG payment field consistent with our established methodology.

As described previously, one or both of these two technical errors resulted in errors to our calculation of the operating and capital IPPS budget neutrality factors, outlier threshold, operating standardized amounts, capital Federal rates, and impacts. As a result of these technical errors we are correcting the following errors:

- In the operating and capital budget neutrality factors, outlier threshold, operating standardized amounts, capital Federal rates, and capital IPPS payment estimates that appear on the following pages of the Addendum of the FY 2015 IPPS/LTCH PPS final rule: 50367 through 50370, 50373 and 50374, 50380 through 50383, 50385 and 50386, 50388 through 50390, and 50404 (Tables 1A through 1D).
- In the data presented in the tables referred to in the FY 2015 IPPS/LTCH PPS final rule and available via the Internet on the CMS Web site (see section II.D. of this correcting document).
- In the operating and capital impacts that appear in the following pages of the Appendices of the FY 2015 IPPS/LTCH PPS final rule: 50405, 50407, 50409 through 50418, 50420 through 50429, 50435 and 50436, and 50446.

The errors described previously also affect the calculation of the Hospital Readmissions Reduction Program payment adjustment factors and the Hospital Value-Based Purchasing (VBP)

Program payment adjustment factors for FY 2015. The readmissions payment adjustment factor is based in part on a ratio of a hospital's ''aggregate payment for excess readmissions'' and its ''aggregate payments for all discharges.'' We use Medicare Part A inpatient claims from the MedPAR file as our data source for determining aggregate payments for excess readmissions and aggregate payments for all discharges. For FY 2015, we use MedPAR claims with discharge dates on or after July 1, 2010 and no later than June 30, 2013 to calculate the ratio used in determining the readmissions payment adjustment factors. Under the Hospital VBP Program, the Secretary reduces the base operating DRG payment amount for an eligible hospital for each discharge in a fiscal year by an applicable percent. The sum total of these reductions in a fiscal year must equal the total amount available for value-based incentive payments for all eligible hospitals for the fiscal year, as estimated by the Secretary. We use a linear exchange function to translate this estimated amount available into a value-based incentive payment percentage for each hospital, based on its total performance score (TPS). We then calculate the value-based incentive payment adjustment factor for each hospital and apply that factor to the base-operating DRG payment amount for each discharge occurring at that hospital in FY 2015 on a per claim basis. We finalized the methodology for using base operating DRG payment amounts derived from the MedPAR file in the calculation of the value-based incentive payment adjustment factors in the FY 2013 IPPS/LTCH PPS final rule (77 FR 53574 and 53575). In the FY 2015 IPPS/LTCH PPS final rule (79 FR 50049), based on the March 2014 update of the FY 2013 MedPAR file (that is, MedPAR Part A claims with discharge dates on or after October 1, 2012 and on or before September 30, 2013), we estimated that the amount available for value-based incentive payments for FY 2015 is $1.4 billion (the applicable percent for the FY 2015 Hospital VBP Program is 1.50 percent).

We use the same methodology described previously to identify only Medicare Part A claims in the MedPAR file and to remove IME MA claims when calculating the Hospital Readmissions Reduction Program and the Hospital VBP Program payment adjustment factors. In addition, we use the claims in the MedPAR file to determine the base operating DRG payment amounts used in the calculation of these payment adjustment factors. Consequently, in determining the base-operating DRG payment amounts used in our calculation of the proxy readmissions adjustment factors (Table 15A) and the updated proxy Hospital VBP payment adjustment factors (Table 16A) for the FY 2015 IPPS/LTCH PPS final rule, we inadvertently failed to properly exclude all of the IME MA claims, and also inadvertently included the 2-percent sequestration reduction for claims in the FY 2013 MedPAR with a discharge date after April 1, 2013. Therefore, to properly account for how sequestration is reflected in the FY 2013 MedPAR data in the calculation of these payment adjustment factors, we restored the 2-percent sequestration reduction to the DRG payment field on the MedPAR claim (as described previously). This correction ensures that we identify and remove all IME MA claims when the IME payment field is equal to the DRG payment field and correctly determine the base-operating DRG payment amount used in the calculation of the readmission and Hospital VBP payment adjustment factors for FY 2015.

At the time of the issuance of the FY 2015 IPPS/LTCH PPS final rule, under the Hospital Readmissions Reduction Program, applicable hospitals had not yet had the opportunity to review and correct data from the FY 2015 applicable period before they were made public under our policy regarding the reporting of hospital-specific information. Therefore, in Table 15A listed in the Addendum of the FY 2015 IPPS/LTCH PPS final rule, we provided proxy FY 2015 readmission payment adjustment factors, and stated that we expected to publish the final FY 2015 readmissions payment adjustment factors in Table 15B on the CMS IPPS Web site by October 2014, and would use those final factors for determining payments for discharges occurring on or after October 1, 2014 (79 FR 50048). Similarly, in the final rule, we provided updated proxy value-based incentive payment adjustment factors for FY 2015 in Table 16A listed in the Addendum of that final rule to reflect changes based on the March 2014 update to the FY 2013 MedPAR file. These updated proxy value-based incentive payment adjustment factors for FY 2015 were based on historic FY 2014 Program TPSs because hospitals had not been given the opportunity to review and correct their actual TPSs for the FY 2015 Hospital VBP Program at the time we issued that final rule. We stated that after hospitals had been given an opportunity to review and correct their actual TPSs for FY 2015, we would publish Table 16B to display the actual value-based incentive payment adjustment factors, and that we expected Table 16B to be posted on the CMS Web site in October 2014 (79 FR 50049).

The review and corrections period for the data from the FY 2015 applicable period under the Hospital Readmissions Reduction Program resulted in no changes to the proxy adjustment factors shown in Table 15A. However, the calculation of the FY 2015 readmissions payment adjustment factors was affected by the inadvertent errors resulting from our use of claims in the FY 2013 MedPAR with a discharge date after April 1, 2013 without properly accounting for how sequestration was reflected in those data. Because we use claims data from July 1, 2010 to June 30, 2013 to calculate the FY 2015 readmissions payment adjustment factors, only a portion of that data (that is, the claims between April 1, 2013 and June 30, 2013) was impacted by the errors described previously. As a result of the correction of those errors, the FY 2015 readmissions payment adjustment factors have changed for 60 hospitals. The final FY 2015 readmissions payment adjustment factors, which were calculated after correcting the errors discussed previously, are posted in Table 15B on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/index.html.* (Click on the link on the left side of the screen titled, ''FY 2015 IPPS Final Rule Home Page'' or ''Acute Inpatient—Files for Download''.) As noted previously, the final FY 2015 readmissions payment adjustment factors in Table 15B will be used for determining payments for discharges occurring on or after October 1, 2014. After accounting for these corrections in determination of the FY 2015 readmissions payment adjustment factors, we are revising the estimated savings under the Hospital Readmissions Reduction Program to $428 million, from $424 million in the FY 2015 IPPS/LTCH PPS final rule (79 FR 50425).

We note that we are not correcting the proxy FY 2015 readmissions payment adjustment factors for FY 2015 shown in Table 15A or the updated proxy value-based incentive payment adjustment factors for FY 2015 shown in Table 16A. However, consistent with the methodology for calculating the operating budget neutrality factors for the FY 2015 IPPS/LTCH PPS final rule (79 FR 50366), we used corrected proxy payment adjustment factors in the recalculation of the IPPS rates for this correcting document. These factors can be found in the IPPS Impact File that

corresponds to this correcting document which is available on the CMS Web site. (We note that the description of the methodology for calculating the operating budget neutrality factors contained errors that are summarized later in the section and corrected in section IV.C.1. of this correcting document). The proxy factors in Table 15A were provided for informational purposes and they are not used for payment adjustment purposes and the final FY 2015 readmissions payment adjustment factors in Table 15B will be used for determining payments for discharges occurring on or after October 1, 2014 (79 FR 50048). Similarly, the proxy factors in Table 16A were provided for informational purposes, according to the methodology finalized in the FY 2013 IPPS/LTCH final rule (77 FR 53576), and they are not used for payment adjustment purposes. As stated in the FY 2015 IPPS/LTCH PPS final rule, we intend to post the actual Hospital VBP Program payment adjustment factors, as Table 16B, in October of 2014, after hospitals have had an opportunity to review and correct their TPSs.

On page 50366, we made an error in the description of our budget neutrality methodology with respect to the readmissions payment adjustment factors that we used for the purpose of modeling aggregate payments when determining all budget neutrality factors. As we discussed in the FY 2015 IPPS/LTCH PPS final rule (79 FR 50048), for that final rule we determined proxy FY 2015 readmission payment adjustment factors (shown in Table 15A), which were calculated based on data from the FY 2015 applicable period of July 1, 2010 to June 30, 2013.

In addition, we made a typographical error in the March 2013 and 2014 operating national average case weighted cost-to charge ratios (CCRs) set forth in the FY 2015 IPPS/LTCH PPS final rule. Also, we made a technical error in the calculation of the capital CCR adjustment factor that is applied to determine the capital CCRs used in our ratesetting process. This inadvertent technical error caused a miscalculation of the capital CCRs used in the determination of the operating and capital budget neutrality factors and the calculation of the outlier threshold for the FY 2015 IPPS/LTCH PPS final rule. Therefore, we are correcting the capital CCR adjustment factor and the capital CCRs used in our determination of the operating and capital budget neutrality factors as well as our calculation of the outlier threshold.

Lastly, we made technical and typographical errors in the table heading for Table 2–2 which is listed in the Addendum of the FY 2015 IPPS/LTCH PPS final rule as one of the tables that are only available through the Internet on the CMS Web site (page 50403).

D. Corrections to Tables Posted on the CMS Web Site

The following corrections are being made to the tables listed on pages 50402 and 50403 of the FY 2015 IPPS/LTCH PPS final rule that are only available through the Internet on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/index.html.*

In Table 2–2.—Acute Care Hospitals Case-Mix Indexes for Discharges Occurring in Federal Fiscal Year 2012; Hospital Wage Indexes for Federal Fiscal Year 2015; Hospital Average Hourly Wages for Federal Fiscal Years 2013 (2009 Wage Data), 2014 (2010 Wage Data), and 2015 (2011 Wage Data; Based on FY 2015 CBSA Delineations); and 3-Year Average of Hospital Average Hourly Wages, we are correcting the table heading as noted in section II.C. of this correcting document. We are also correcting the entries in column ''FY 2015 Wage Index'' as a result of the technical errors discussed in section II.C. of this correcting document.

We are correcting the following tables in the entirety as a result of the technical errors discussed in section II.C. of this correcting document:

- Table 4A–1.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Acute Care Hospitals in Urban Areas by CBSA and by State—FY 2015; Based on CBSA Delineations Used in FY 2014.
- Table 4A–2.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Acute Care Hospitals in Urban Areas by CBSA and by State—FY 2015; Based on CBSA Delineations Used in FY 2015.
- Table 4B–1.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Acute Care Hospitals in Rural Areas by CBSA and by State—FY 2015; Based on CBSA Delineations Used in FY 2014.
- Table 4B–2.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Acute Care Hospitals in Rural Areas by CBSA and by State—FY 2015; Based on FY 2015 CBSA Delineations.
- Table 4C–1.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Acute Care Hospitals That Are Reclassified by CBSA and by State—FY 2015; Based on CBSA Delineations Used in FY 2014.
- Table 4C–2.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Acute Care Hospitals That Are Reclassified by CBSA and by State—FY 2015; Based on CBSA Delineations Used in FY 2015.
- Table 4D–1.—States Designated as Frontier, with Acute Care Hospitals Receiving at a Minimum the Frontier State Floor Wage Index; Urban Areas with Acute Care Hospitals Receiving the Statewide Rural Floor or Imputed Floor Wage Index—FY 2015; Based on CBSA Delineations Used in FY 2014.
- Table 4D–2.—States Designated as Frontier, with Acute Care Hospitals Receiving at a Minimum the Frontier State Floor Wage Index; Urban Areas with Acute Care Hospitals Receiving the Statewide Rural Floor or Imputed Floor Wage Index—FY 2015; Based on CBSA Delineations Used in FY 2015.
- Table 4J.—Out-Migration Adjustment for Acute Care Hospitals—FY 2015
- Table 10.—New Technology Add-On Payment Thresholds [1,2] for Applications for FY 2016.

Table 5.—List of Medicare Severity Diagnosis-Related Groups (MS–DRGs), Relative Weighting Factors, and Geometric and Arithmetic Mean Length of Stay—FY 2015. We are correcting this table by correcting typographical and technical errors in the columns titled ''Geometric Mean LOS'' and ''Arithmetic Mean LOS''.

Table 8B.—FY 2015 Statewide Average Capital Cost-to-Charge Ratios (CCRs) for Acute Care Hospitals. We are correcting typographical and technical errors in this table.

Table 18.—FY 2015 Medicare DSH Uncompensated Care Payment Factor 3 and Supplemental Medicare DSH File—FY 2015 Uncompensated Care Payment Factors. For the FY 2015 IPPS/LTCH PPS final rule, we published a list of hospitals that we identified to be subsection (d) hospitals and subsection (d) Puerto Rico hospitals eligible to receive empirically justified Medicare DSH payment adjustments and uncompensated care payments for FY 2015. As stated in the FY 2015 IPPS/LTCH PPS final rule (79 FR 50022), we allowed the public an additional period after the issuance of the final rule to review and submit comments on the accuracy of the list of mergers that we identified in the final rule. Based on the comments received during this additional period, we are updating Table 18 and the Supplemental Medicare DSH File to reflect the merger information received in response to the final rule and are also making one other correction to Table 18 and the Supplemental Medicare DSH File. We have discovered that in calculating Factor 3 of the uncompensated care payment methodology, we inadvertently

excluded the Medicaid days from the most recently available 2012 or 2011 cost report for a certain provider that was projected to receive Medicare DSH in FY 2015. This provider submitted its Medicare hospital cost reports to its Medicare contractor prior to the March 2014 update of HCRIS but due to technical errors the Medicare hospital cost reports were not included in the March 2014 update of HCRIS. As a result, this provider had no Medicaid days included in the calculation of Factor 3. In order to correct this error, we have revised Factor 3 for all hospitals to incorporate the changes to the data for this provider whose Medicare hospital cost report data were inadvertently excluded from the March 2014 update of HCRIS.

E. Summary of Errors in the Appendices

On page 50428, in our discussion of the effects of the new technology add-on payment policy, we made an error in the costs of the add-on payments for Voraxaze® for FY 2015.

On pages 50405, 50407, and 50409 through 50429; we made errors in the operating impacts as described in section II.C. of this correcting document.

On pages 50435 through 50437, we made errors in the capital impacts as described in section II.C. of this correcting document.

On page 50446, we made an error in the estimated expenditures under the IPPS as a result of the errors described in section II.C. of this correcting document.

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)). 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 therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in 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.

In our view, this correcting document does not constitute a rule that would be subject to the APA notice and comment or delayed effective date requirements. This correcting document corrects technical and typographic errors in the preamble, regulation text, addendum, payment rates, tables, and appendices included or referenced in the FY 2015 IPPS/LTCH PPS final rule but does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this correcting document is intended to ensure that the information in the FY 2015 IPPS/LTCH PPS final rule accurately reflects the policies adopted in that final rule.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the FY 2015 IPPS/LTCH PPS final rule accurately reflects our policies. Furthermore, such procedures would be unnecessary, as we are not altering our payment methodologies or policies, but rather, we are simply implementing correctly the policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the FY 2015 IPPS/LTCH PPS final rule accurately reflects these payment methodologies and policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors

In FR Doc. 2014–18545 of August 22, 2014 (79 FR 49853), make the following corrections:

A. Corrections of Errors in the Preamble

1. On page 49865, third column, third bulleted paragraph, line 12, the figure ''$369'' is corrected to read ''$373''.

2. On page 49918, second column, first partial paragraph:

a. Lines 7 through 12, the sentences ''The cost of Voraxaze® is $22,500 per vial. The applicant stated that an average of four vials is used per Medicare beneficiary. Therefore, the average cost per case for Voraxaze® is $90,000 ($22,500 × 4).'' are corrected to read ''Based on the latest data from the manufacturer, the cost of Voraxaze® is $23,625 per vial. The applicant stated that an average of four vials is used per Medicare beneficiary. Therefore, the average cost per case for Voraxaze® is $94,500 ($23,625 × 4).''

b. Lines 18 through 20, the sentence ''As a result, the maximum new technology add-on payment for Voraxaze® is $45,000 per case.'' is corrected to read ''As a result, based on the latest data from the manufacturer, the maximum new technology add-on payment for Voraxaze® for FY 2015 is $47,250 per case.''

3. On page 49940, third column, last paragraph, fourth line from the bottom, the phrase ''the maximum payment'' is corrected to read ''the maximum add-on payment''.

4. On pages 50246 through 50249, the table titled ''Previously Adopted Hospital IQR Program Measures and Measures Newly Finalized in this Final Rule for the FY 2017 Payment Determination and Subsequent Years'' is corrected as follows:

a. Adding the following entry (short name VTE–3) immediately preceding the entry VTE–5:

Short name	Measure name	NQF No.	Submission methods for FY 2017	New for FY 2017
VTE–3	Venous thromboembolism patients with anticoagulation overlap therapy.	NQF #0373	Electronic clinical quality measure or chart-abstracted REQUIRED.	

b. Removing the entry for VTE–3 that follows the entry for Stroke-10.

c. Adding the following entry for PN–6 immediately preceding the entry for VTE–4:

Short name	Measure name	NQF No.	Submission methods for FY 2017	New for FY 2017
PN–6 ...	Initial Antibiotic Selection for community-acquired pneumonia (CAP) in Immunocompetent Patients.	NQF #0147	Electronic clinical quality measure.	Voluntary electronic clinical quality measure.

5. On 50279, second column, second full paragraph, lines 10 through 13, the hyperlink, ''*http://www.Fqualityforum.Forg/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=70374*'' is corrected to read ''*http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=70374*.''

6. On page 50284:

a. Second column, first partial paragraph:

(1) Line 7, the phrase ''However the six'' is corrected to read ''However for the six''.

(2) Line 12, the phrase ''four quarters data'' is corrected to read ''four quarters of data''.

b. Third column, third full paragraph, lines 14 and 15, the parenthetical phase ''(and not limited to orthopedic surgeries)'' is corrected to read ''(and are not limited to orthopedic surgeries)''.

7. On page 50298, second column, first partial paragraph, line 6, the phrase ''the CAM® Instrument'' is corrected to read ''the short CAM® instrument''.

8. On page 50302, third column, second full paragraph, lines 3 and 4, the phrase ''of long-term mechanical ventilation'' is corrected to read ''with patients on prolonged mechanical ventilation''.

9. On page 50306, lower two-thirds of the page, third column, partial paragraph, lines 18 and 19, the phrase ''tobacco performance measure set'' is corrected to read ''tobacco treatment performance measure set''.

10. On page 50335, first column, first full paragraph:

a. Line 34, the phrase ''that because available'' is corrected to read ''that became available''.

b. Lines 38 and 39, the phrase ''not enter into an SIA'' is corrected to read ''not entered into an SIA''.

B. Corrections of Errors in the Regulation Text

§ 405.1811 [Corrected]

1. On page 50350, in the first column, in § 405.1811(c) introductory text, lines 7 and 8, the phrase ''for a cost reporting period if—'' is corrected to read ''for specific items for a cost reporting period if—''.

§ 405.1835 [Corrected]

2. On page 50350, in the third column, in § 405.1835(c), in lines 7 through 9, the phrase ''for specific items claimed for a cost reporting period if—'' is corrected to read ''for specific items for a cost reporting period if—''.

C. Corrections of Errors in the Addendum

1. On page 50366, first column, first full paragraph the paragraph beginning with the phrase ''For the purpose of calculating the FY'' and ending with the phrase ''to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53399 through 53400).)'' is corrected to read as follows:

''For the purpose of calculating the proposed FY 2015 readmissions payment adjustment factors in the proposed rule, we used excess readmission ratios and aggregate payments for excess readmissions based on admissions from the prior fiscal year's applicable period because hospitals have had the opportunity to review and correct these data before the data were made public under the policy we adopted regarding the reporting of hospital-specific readmission rates, consistent with section 1886(q)(6) of the Act. As discussed in section IV.H.11. of this preamble, because the review and corrections period will still be ongoing through August 19, 2014, which extends beyond the issuance of this FY 2015 IPPS/LTCH PPS final rule, we are calculating proxy FY 2015 readmissions payment adjustment factors using excess readmission ratios and aggregate payments for excess readmissions based on admissions from the finalized applicable period for FY 2015. We will determine the final readmissions payment adjustment factors that will be used for payments in FY 2015 after the completion of the review and correct process. (For additional information on our general policy for the reporting of hospital-specific readmission rates, consistent with section 1886(q)(6) of the Act, we refer readers to the FY 2013 IPPS/LTCH PPS final rule (77 FR 53399 through 53400).)''

2. On page 50367, third column, first full paragraph:

a. Line 3, the figure ''0.997543'' is corrected to read ''0.998761''.

b. Line 8, the figure ''0.997543'' is corrected to read ''0.998761''.

3. On page 50368:

a. First column, first partial paragraph, line 19, the figure ''0.997543'' is corrected to read ''0.998761''.

b. Third column:

(1) First partial paragraph, line 11, the figure ''0.997543'' is corrected to read ''0.998761''.

(2) Last paragraph:

(a) Line 9, the figure ''1.001443'' is corrected to read ''1.001421''.

(b) Line 13, the figure ''0.997543'' is corrected to read ''0.998761''.

(c) Line 15, the figure ''1.001443'' is corrected to read ''1.001421''.

(d) Line 21, the figure ''0.998982'' is corrected to read ''1.000180''.

4. On page 50369, first column, last partial paragraph, line 13, the figure ''0.990406'' is corrected to read ''0.990429''.

5. On page 50370, first column, second full paragraph:

a. Line 3, the figure ''0.989507'' is corrected to read ''0.989525''.

b. Line 5, the figure ''0.991291'' is corrected to read ''0.991293''.

6. On page 50373:

a. First column, last paragraph, line 3, the figure ''0.998859'' is corrected to read ''0.998854''.

b. Second column, first partial paragraph, line 1, the figure ''0.998859'' is corrected to read ''0.998854''.

7. On page 50374, second column, second full paragraph, line 5, the figure ''0.99931'' is corrected to read ''0.999313''.

8. On page 50380:

a. First column:

(1) First paragraph:

(a) Line 4, the figure ''0.292377'' is corrected to read ''0.292376''.

(b) Line 6, the figure ''0.28714'' is corrected to read ''0.287139''.

(2) Second paragraph:

(a) Line 7, the figure ''0.024849'' is corrected to read ''0.024649''.

(b) Line 18, the figure ''0.988307'' is corrected to read ''0.980352''.

c. Third column, second full paragraph, line 9, the figure ''$24,758'' is corrected to read ''$24,626''.

9. On page 50381:

a. First column:

(1) First full paragraph, line 15, the figure ''6.27'' is corrected to read ''6.18''.

(2) Third full paragraph, the table is corrected to read as follows:

	Operating standardized amounts	Capital federal rate
National	0.948999	0.938237
Puerto Rico	0.926334	0.916334

b. Third column, third full paragraph:

(1) Line 4, the figure ''5.71'' is corrected to read ''5.68''.

(2) Line 6, the figure ''0.61'' is corrected to read ''0.58''.

(3) Line 10, the figure ''5.71'' is corrected to read ''5.68''.

10. On pages 50382 and 50383, the table titled, ''Comparison of FY 2014 Standardized Amounts to the FY 2015 Standardized Amounts'' is corrected to read as follows:

COMPARISON OF FY 2014 STANDARDIZED AMOUNTS TO THE FY 2015 STANDARDIZED AMOUNTS

	Hospital submitted quality data and is a meaningful EHR user	Hospital submitted quality data and is NOT a meaningful EHR user	Hospital did NOT submit quality data and is a meaningful EHR user	Hospital did NOT submit quality data and is NOT a meaningful EHR user
FY 2014 Base Rate after removing: 1. FY 2014 Geographic Reclassification Budget Neutrality (0.990718). 2. FY 2014 Rural Community Hospital Demonstration Program Budget Neutrality (0.999415). 3. Cumulative Factor: FY 2008, FY 2009, FY 2012, FY 2013, and FY 2014 Documentation and Coding Adjustment as Required under Sections 7(b)(1)(A) and 7(b)(1)(B) of Pub. L. 110–90 and Documentation and Coding Recoupment Adjustment as required under Section 631 of the American Taxpayer Relief Act of 2012 (0.9403). 4. FY 2014 Operating Outlier Offset (0.948995).	If Wage Index is Greater Than 1.0000: Labor (69.6%): $4,230.38 Nonlabor (30.4%): $1,847.75. If Wage Index is less Than or Equal to 1.0000: Labor (62%): $3,768.45 Nonlabor (38%): $2,309.70.	If Wage Index is Greater Than 1.0000: Labor (69.6%): $4,230.38 Nonlabor (30.4%): $1,847.75. If Wage Index is less Than or Equal to 1.0000: Labor (62%): $3,768.45 Nonlabor (38%): $2,309.70.	If Wage Index is Greater Than 1.0000: Labor (69.6%): $4,230.38 Nonlabor (30.4%): $1,847.75. If Wage Index is less Than or Equal to 1.0000: Labor (62%): $3,768.45 Nonlabor (38%): $2,309.70.	If Wage Index is Greater Than 1.0000: Labor (69.6%): $4,230.38 Nonlabor (30.4%): $1,847.75. If Wage Index is less Than or Equal to 1.0000: Labor (62%): $3,768.45 Nonlabor (38%): $2,309.70.
FY 2015 Update Factor	1.022	1.01475	1.01475	1.0075.
FY 2015 MS-DRG Recalibration and Wage Index Budget Neutrality Factor.	1.000180	1.000180	1.000180	1.000180.
FY 2015 Reclassification Budget Neutrality Factor.	0.990429	0.990429	0.990429	0.990429.
FY 2015 Rural Community Demonstration Program Budget Neutrality Factor.	0.999313	0.999313	0.999313	0.999313.
FY 2015 Operating Outlier Factor	0.948999	0.948999	0.948999	0.948999.
Cumulative Factor: FY 2008, FY 2009, FY 2012, FY 2013, FY 2014 and FY 2015 Documentation and Coding Adjustment as Required under Sections 7(b)(1)(A) and 7(b)(1)(B) of Pub. L. 110–90 and Documentation and Coding Recoupment Adjustment as required under Section 631 of the American Taxpayer Relief Act of 2012.	0.9329	0.9329	0.9329	0.9329.
FY 2015 New Labor Market Delineation Wage Index Transition Budget Neutrality Factor.	0.998854	0.998854	0.998854	0.998854.
National Standardized Amount for FY 2015 if Wage Index is Greater Than 1.0000; Labor/Non-Labor Share Percentage (69.6/30.4).	Labor: $3,784.75 Nonlabor: $1,653.10.	Labor: $3,757.90 Nonlabor: $1,641.37.	Labor: $3,757.90 Nonlabor: $1,641.37.	Labor: $3,731.05 Nonlabor: $1,629.65.
National Standardized Amount for FY 2015 if Wage Index is less Than or Equal to 1.0000; Labor/Non-Labor Share Percentage (62/38).	Labor: $3,371.47 Nonlabor: $2,066.38.	Labor: $3,347.55 Nonlabor: $2,051.72.	Labor: $3,347.55 Nonlabor: $2,051.72.	Labor: $3,323.63 Nonlabor: $2,037.07.

11. On page 50383, the table titled, ''Comparison of FY 2014 Puerto Rico-Specific Payment Rate to the FY 2015 Puerto Rico-Specific Payment Rate'' is corrected to read as follows:

COMPARISON OF FY 2014 PUERTO RICO-SPECIFIC PAYMENT RATE TO THE FY 2015 PUERTO RICO-SPECIFIC PAYMENT RATE

	Update (2.2 percent); wage index is greater than 1.0000; labor/non-labor share percentage (63.2/36.8)	Update (2.2 percent); Wage index is less than or equal to 1.0000; labor/non-labor share percentage (62/38)
FY 2014 Puerto Rico Base Rate, after removing: 1. FY 2014 Geographic Reclassification Budget Neutrality (0.990718). 2. FY 2014 Rural Community Hospital Demonstration Program Budget Neutrality (0.999415). 3. FY 2014 Puerto Rico Operating Outlier Offset (0.943455).	Labor: $1,722.31 Nonlabor: $1,002.86	Labor: $1,689.61 Nonlabor: $1,035.56.
FY 2015 Update Factor	1.022	1.022.
FY 2015 MS-DRG Recalibration Budget Neutrality Factor.	0.998761	0.998761.
FY 2015 Reclassification Budget Neutrality Factor.	0.990429	0.990429.
FY 2015 Rural Community Hospital Demonstration Program Budget Neutrality Factor.	0.999313	0.999313.
FY 2015 New Labor Market Delineation Wage Index Transition Budget Neutrality Factor.	0.998854	0.998854.
FY 2015 Puerto Rico Operating Outlier Factor ..	0.926334	0.926334.
Puerto Rico-Specific Payment Rate for FY 2015	Labor: $1,609.97 Nonlabor: $937.45	Labor: $1,579.40 Nonlabor: $968.02.

12. On page 50385, lower half of the page, first column, second paragraph, line 15, the figure ''0.997543'' is corrected to read ''0.998761''.

13. On page 50386, second column, last partial paragraph, line 6, the figure ''1.2'' is corrected to read ''1.3''.

14. On page 50388:

a. First column:

(1) Second full paragraph:

(a) Line 9, the figure ''6.27'' is corrected to read ''6.18''.

(b) Line 13, the figure ''0.9373'' is corrected to read ''0.9382''

(2) Third full paragraph:

(a) Line 6, the phrase ''0.9373 is a −0.21 percent'' is corrected to read ''0.9382 is a −0.12 percent''.

(b) Line 11, the mathematical expression ''0.9979 (0.9373/0.9393)'' is corrected to read ''0.9988 (0.9382/0.9393)''.

(c) Line 13, the figure ''0.21 percent'' is corrected to read ''0.12 percent''

b. Second column, second full paragraph:

(1) Line 12, the figure ''0.9987'' is corrected to read''0.9994''.

(2) Line 17, the figure ''0.9877'' is corrected to read ''0.9884''.

(3) Line 18, the figure ''1.0075'' is corrected to read ''1.0082''.

c. Third column:

(1) Third full paragraph, line 9, the figure ''$434.26'' is corrected to read ''$434.97''.

(2) Fifth full paragraph (second bulleted paragraph), last line, the figure ''0.9986'' is corrected to read ''0.9993''.

(3) Sixth full paragraph (third bulleted paragraph), last line, the figure ''0.9373'' is corrected to read ''0.9382''.

15. On page 50389:

a. Top of page, third column, partial paragraph:

(1) Line 1, the figure ''0.14'' is corrected to read ''0.07''.

(2) Line 4, the figure ''0.21''is corrected to read ''0.11''.

(3) Line 7, the figure ''1.15'' is corrected to read ''1.32''.

b. Top half of the page, first table titled, ''Comparison of Factors and Adjustments: FY 2014 Capital Federal Rate and FY 2015 Capital Federal Rate'' the table and table footnotes are corrected to read as follows:

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 2014 CAPITAL FEDERAL RATE AND FY 2015 CAPITAL FEDERAL RATE

	FY 2014	FY 2015	Change	Percent change
Update Factor [1]	1.0090	1.0150	1.0150	1.50
GAF/DRG Adjustment Factor [1]	0.9987	0.9993	0.9993	−0.07
Outlier Adjustment Factor [2]	0.9393	0.9382	0.9989	−0.11
Capital Federal Rate	429.31	434.97	1.0132	1.32

[1] The update factor and the GAF/DRG budget neutrality adjustment factors are built permanently into the capital Federal rates. Thus, for example, the incremental change from FY 2014 to FY 2015 resulting from the application of the 0.9993 GAF/DRG budget neutrality adjustment factor for FY 2015 is a net change of 0.9993 (or −0.07 percent).

[2] The outlier reduction factor is not built permanently into the capital Federal rate; that is, the factor is not applied cumulatively in determining the capital Federal rate. Thus, for example, the net change resulting from the application of the FY 2015 outlier adjustment factor is 0.9382/0.9393, or 0.9989 (or −0.11 percent).

c. Middle of the page, second table titled, ''Comparison of Factors and Adjustments: Proposed FY 2015 Capital Federal Rate and Final FY 2015 Capital Federal Rate'' is corrected to read as follows:

COMPARISON OF FACTORS AND ADJUSTMENTS: PROPOSED FY 2015 CAPITAL FEDERAL RATE AND FINAL FY 2015 CAPITAL FEDERAL RATE

	Proposed	Final	Change	Percent change
Update Factor	1.0150	1.0150	1.0000	0.00
GAF/DRG Adjustment Factor	0.9957	0.9993	1.0037	0.37
Outlier Adjustment Factor	0.9374	0.9382	1.0009	0.09
Capital Federal Rate	433.01	434.97	1.0045	0.45

d. Bottom half of the page, third column, second full paragraph, last line, the figure ''$209.10.'' is corrected to read ''$209.45.''

16. On page 50390, second column, first partial paragraph, last line, the figure ''$24,758'' is corrected to read ''$24,626''.

17. On page 50403, first column, first paragraph (table heading for Table 2–2), the heading, ''Table 2–2.—Acute Care Hospitals Case-Mix Indexes for Discharges Occurring in Federal Fiscal Year 2012; Hospital Wage Indexes for Federal Fiscal Year 2015; Hospital Average Hourly Wages for Federal Fiscal Years 2013 (2009 Wage Data), 2014 (2010 Wage Data), and 2015 (2011 Wage Data; Based on FY 2015 CBSA Delineations); and 3-Year Average of Hospital Average Hourly Wages'' is corrected to read ''Table 2–2.—Acute Care Hospitals Case-Mix Indexes for Discharges Occurring in Federal Fiscal Year 2013; Hospital Wage Indexes for Federal Fiscal Year 2015; Hospital Average Hourly Wages for Federal Fiscal Years 2013 (2009 Wage Data; Based on FY 2014 CBSA Delineations), 2014 (2010 Wage Data; Based on FY 2014 CBSA Delineations), and 2015 (2011 Wage Data; Based on FY 2015 CBSA Delineations); and 3-Year Average of Hospital Average Hourly Wages (Based on FY 2014 and FY 2015 CBSA Delineations)''.

18. On page 50404:

a. Top one-sixth of the page, the first table titled ''Table 1A.—National Adjusted Operating Standardized Amounts, Labor/Nonlabor (69.6 Percent Labor Share/30.4 Percent Nonlabor Share If Wage Index Is Greater Than 1)—FY 2015'' is corrected to read as follows:

TABLE 1A—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR (69.6 PERCENT LABOR SHARE/30.4 PERCENT NONLABOR SHARE IF WAGE INDEX IS GREATER THAN 1)—FY 2015

Hospital submitted quality data and is a meaningful EHR user (update = 2.2 percent)		Hospital did NOT submit quality data and is a meaningful EHR user (update = 1.475 percent)		Hospital submitted quality data and is NOT a meaningful EHR user (update = 1.475 percent)		Hospital did NOT submit quality data and is NOT a meaningful EHR user (Update = 0.75 percent)	
Labor	Nonlabor	Labor	Nonlabor	Labor	Nonlabor	Labor	Nonlabor
$3,784.75	$1,653.10	$3,757.90	$1,641.37	$3,757.90	$1,641.37	$3,731.05	$1,629.65

b. Top third of the page, the second table titled ''Table 1B.—National Adjusted Operating Standardized Amounts, Labor/Nonlabor (62 Percent Labor Share/38 Percent Nonlabor Share If Wage Index Is Less Than Or Equal To 1)—FY 2015'' is corrected to read as follows:

TABLE 1B—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR (62 PERCENT LABOR SHARE/38 PERCENT NONLABOR SHARE IF WAGE INDEX IS LESS THAN OR EQUAL TO 1)—FY 2015

Hospital submitted quality data and is a meaningful EHR user (update = 2.2 percent)		Hospital did NOT submit quality data and is a meaningful EHR user (update = 1.475 percent)		Hospital submitted quality data and is NOT a meaningful EHR user (update = 1.475 percent)		Hospital did NOT submit quality data and is NOT a meaningful EHR user (update = 0.75 percent)	
Labor	Nonlabor	Labor	Nonlabor	Labor	Nonlabor	Labor	Nonlabor
$3,371.47	$2,066.38	$3,347.55	$2,051.72	$3,347.55	$2,051.72	$3,323.63	$2,037.07

c. Middle of the page, the third table titled ''Table 1C.—Adjusted Operating Standardized Amounts For Puerto Rico, Labor/Nonlabor (National: 62 Percent Labor Share/38 Percent Nonlabor Share Because Wage Index Is Less Than Or Equal To 1; Puerto Rico: 63.2 Percent Labor Share/36.8 Percent Nonlabor Share If Wage Index Is Greater Than 1 Or 62 Percent Labor Share/38 Percent Nonlabor Share If Wage Index Is Less Than Or Equal To 1—FY 2015'' is corrected to read as follows:

TABLE 1C—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR (NATIONAL: 62 PERCENT LABOR SHARE/38 PERCENT NONLABOR SHARE BECAUSE WAGE INDEX IS LESS THAN OR EQUAL TO 1; PUERTO RICO: 63.2 PERCENT LABOR SHARE/36.8 PERCENT NONLABOR SHARE IF WAGE INDEX IS GREATER THAN 1 OR 62 PERCENT LABOR SHARE/38 PERCENT NONLABOR SHARE IF WAGE INDEX IS LESS THAN OR EQUAL TO 1—FY 2015

Standardized amount	Rates if wage index is greater than 1		Rates if wage index is less than or equal to 1	
	Labor	Nonlabor	Labor	Nonlabor
.				
National [1]	Not Applicable	Not Applicable	$3,371.47	$2,066.38
Puerto Rico	$1,609.97	$937.45	1,579.40	968.02

[1] For FY 2015, there are no CBSAs in Puerto Rico with a national wage index greater than 1.

d. Lower third of the page, the fourth table titled ''Table 1D.—Capital Standard Federal Payment Rate—FY 2015'' is corrected to read as follows:

TABLE 1D—CAPITAL STANDARD FEDERAL PAYMENT RATE—FY 2015

	Rate
National	$434.97
Puerto Rico	209.45

D. Corrections of Errors in the Appendices

1. On page 50405, first column, first paragraph:

a. Line 10, the figure ''$654'' is corrected to read ''$623''.

b. Line 12, the figure ''$132'' is corrected to read ''$128''.

c. Line 14, the figure ''1.6'' is corrected to read ''1.5''.

2. On page 50407, second column, last partial paragraph, line 3, the figure ''5.71'' is corrected to read ''5.68''.

3. On pages 50409 through 50419, table titled ''Table I.—Impact Analysis of Changes to the IPPS For Operating Costs for FY 2015'' the table and table footnotes are corrected as follows:

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TABLE I.—IMPACT ANALYSIS OF CHANGES TO THE IPPS FOR OPERATING COSTS FOR FY 2015

	No. of Hospitals[1] (1)	Hospital Rate Update and Documentation and Coding Adjustment[2] (2)	FY 2015 Weights and DRG Changes with Application of Recalibration Budget Neutrality[3] (3)	FY 2015 Wage Data with Application of Wage Budget Neutrality[4] (4)	FY 2015 DRG, Rel. Wts., Wage Index Changes with Wage and Recalibration Budget Neutrality[5] (5)	FY 2015 MGCRB Reclassifications[6] (6)	Rural Floor and Imputed Floor with Application of National Rural Floor Budget Neutrality[7] (7)	Impact of the New OMB CBSA Designations[8] (8)	Application of the CBSA Transition Wage Index with Budget Neutrality[9] (9)	Application of the Frontier Wage Index and Out-Migration Adjustment[10] (10)	Hospital Readmissions Reduction Program[11] (11)	Changes to Medicare DSH[12] (12)	All FY 2015 Changes[13] (13)
All Hospitals	3,396	1.5	0	0	0	0	0	0	0	0.1	-0.2	-1.3	-0.6
By Geographic Location:													
Urban hospitals	2,549	1.4	0	0	0	-0.1	0	0	0	0.1	-0.2	-1.4	-0.6
Large urban areas	1,401	1.4	0.1	0.1	0.2	-0.3	0	0	0	0	-0.2	-1.4	-0.6
Other urban areas	1,148	1.5	0	-0.2	-0.2	0.1	0	0	0	0.2	-0.2	-1.3	-0.6
Rural hospitals	847	1.8	-0.2	0.1	-0.2	1.6	-0.3	0	0	0.1	0	-0.9	-0.6
Bed Size (Urban):													
0-99 beds	666	1.5	-0.2	0.1	-0.1	-0.4	0.1	0.1	0	0.4	-0.2	-0.7	-0.3
100-199 beds	787	1.4	-0.1	-0.1	-0.1	0	0.3	0	0	0.2	-0.3	-1.4	-0.7
200-299 beds	455	1.5	-0.1	0	0	0.1	0	0.1	0	0.1	-0.2	-1.1	-0.2
300-499 beds	429	1.4	0	0	0.1	-0.3	0.1	0.1	0	0.2	-0.1	-1.5	-0.6
500 or more beds	212	1.4	0.2	0	0.2	-0.2	-0.2	-0.1	0	0	-0.1	-1.4	-0.8
Bed Size (Rural):													
0-49 beds	328	1.8	-0.2	-0.1	-0.3	0.4	-0.2	-0.1	0.1	0.2	0	-0.7	-1.1
50-99 beds	305	1.9	-0.3	0.1	-0.3	0.9	-0.2	0	0	0.1	0	-0.9	-1.4
100-149 beds	125	1.8	-0.2	0.1	-0.2	1.8	-0.3	0	0	0.2	-0.1	-0.9	0
150-199 beds	50	1.7	-0.1	0.1	0	1.8	-0.3	0	0	0.2	-0.1	-1.2	-0.4
200 or more beds	39	1.7	-0.1	0.1	0	2.8	-0.4	0.1	-0.1	0	0.1	-0.7	0.4
Urban by Region:													
New England	120	1.4	0	0.8	0.8	1.3	2.8	-0.5	0.2	0.1	-0.2	-1	0
Middle Atlantic	324	1.4	0.1	0.1	0.2	0.1	-0.4	0	0.3	0.2	-0.2	-1.2	-0.1
South Atlantic	407	1.4	0	-0.3	-0.2	-0.3	-0.4	0.1	-0.1	0	-0.2	-1.3	-0.9
East North Central	397	1.4	0	0	0	-0.2	-0.6	0.1	-0.1	0	-0.3	-1.1	-0.5
East South Central	153	1.4	0	-0.5	-0.4	-0.4	-0.4	0	-0.1	0	-0.2	-1.6	-1.3
West North Central	162	1.4	0	-0.1	0	-0.7	-0.5	0.1	-0.1	0.8	-0.1	-1	-0.4
West South Central	387	1.4	0	-0.6	-0.5	-0.5	-0.5	0.1	-0.1	0	-0.2	-2	-1.7
Mountain	162	1.5	-0.1	0	0	-0.1	0	0.1	-0.1	0.2	-0.2	-1.6	-0.8
Pacific	385	1.4	0	0.6	0.5	-0.2	1.4	0.1	-0.1	0	-0.1	-1.5	0.1
Puerto Rico	52	1.5	0.2	0.1	0.3	-0.8	0	-0.1	0	0	0	-7.6	-7.3
Rural by Region:													
New England	22	1.7	-0.1	0.6	0.4	2.2	-0.3	0	0	0	0	-0.5	-0.9
Middle Atlantic	57	1.9	-0.3	0.7	0.3	1.1	-0.2	-0.2	0.2	0.2	-0.1	-0.7	-0.7
South Atlantic	132	1.8	-0.2	-0.1	-0.3	2.2	-0.4	0	0	0.1	0.1	-1	-0.8
East North Central	116	1.9	-0.2	0	-0.2	1.1	-0.2	0.1	0	0	-0.1	-0.5	0.2
East South Central	165	1.6	-0.1	-0.3	-0.3	2.6	-0.5	0	-0.1	0.1	-0.1	-1.5	-1.4
West North Central	102	2.1	-0.3	0	-0.3	0.4	-0.1	0.1	0	0.3	0	-0.3	0.3
West South Central	168	1.7	-0.1	0	0	1.6	-0.4	-0.1	0	0.1	-0.2	-1.6	-1.8
Mountain	61	2	-0.3	-0.1	-0.4	0.2	-0.1	0	0	0.6	0	-0.4	0.6
Pacific	24	2.3	-0.6	0.8	-0.4	0.9	-0.1	-0.2	0	0	0.2	-0.3	1.3
By Payment Classification:													
Urban areas	2,563	1.4	0	0	0.1	-0.1	0	0	0	0.1	-0.2	-1.4	-0.6
Large urban areas	1,413	1.4	0.1	0.1	0.2	-0.3	0	0	0	0	-0.2	-1.4	-0.6
Other urban areas	1,150	1.5	0	-0.2	-0.1	0.1	0	0	0	0.2	-0.2	-1.3	-0.6
Rural areas	833	1.8	-0.2	0	-0.2	1.2	-0.3	-0.1	0	0.3	0	-0.8	-0.5

	No. of Hospitals[1] (1)	Hospital Rate Update and Documentation and Coding Adjustment[2] (2)	FY 2015 Weights and DRG Changes with Application of Recalibration Budget Neutrality[3] (3)	FY 2015 Wage Data with Application of Wage Budget Neutrality[4] (4)	FY 2015 DRG, Rel. Wts., Wage Index Changes with Wage and Recalibration Budget Neutrality[5] (5)	FY 2015 MGCRB Reclassifications[6] (6)	Rural Floor and Imputed Floor with Application of National Rural Floor Budget Neutrality[7] (7)	Impact of the New OMB CBSA Designations[8] (8)	Application of the CBSA Transition Wage Index with Budget Neutrality[9] (9)	Application of the Frontier Wage Index and Out-Migration Adjustment[10] (10)	Hospital Readmissions Reduction Program[11] (11)	Changes to Medicare DSH[12] (12)	All FY 2015 Changes[13] (13)
Teaching Status:													
Nonteaching	2,357	1.5	-0.1	-0.1	-0.1	0.2	0.2	0.1	0	0.1	-0.2	-1.1	-0.5
Fewer than 100 residents	795	1.5	0	0	0	-0.1	-0.1	0.1	0	0.2	-0.2	-1.4	-0.5
100 or more residents	244	1.4	0.2	0.1	0.3	-0.1	-0.2	-0.1	0.1	0	-0.1	-1.6	-0.8
Urban DSH:													
Non-DSH	679	1.5	-0.1	-0.1	-0.1	0	0	0.2	0	0.2	-0.2	-0.3	0.6
100 or more beds	1,588	1.4	0	0	0.1	-0.1	0	0	0	0.1	-0.2	-1.5	-0.8
Less than 100 beds	383	1.5	-0.2	0.2	0	0	0	0.1	0	0.3	-0.2	-1	-0.7
Rural DSH:													
SCH	373	2.1	-0.3	0	-0.4	0.3	-0.1	0	0	0	0	-0.6	-0.5
RRC	212	1.8	-0.2	0	-0.1	1.8	-0.3	0	0	0.5	0	-0.9	-0.2
100 or more beds	24	1.4	-0.1	-0.2	-0.3	2.4	-0.6	0.1	0	0.2	-0.2	-1.7	-1.2
Less than 100 beds	137	1.4	-0.1	-0.1	-0.2	1	-0.6	-0.3	0.2	0.6	-0.2	-1.8	-1.2
Urban teaching and DSH:													
Both teaching and DSH	842	1.4	0.1	0	0.2	-0.2	-0.1	0	0	0.1	-0.1	-1.6	-0.8
Teaching and no DSH	133	1.4	0	0	0	0.3	0.1	0.1	0	0.1	-0.3	-0.3	0.9
No teaching and DSH	1,129	1.5	-0.1	-0.1	-0.1	0	0.3	0.1	0	0.1	-0.2	-1.4	-0.7
No teaching and no DSH	459	1.4	-0.1	-0.2	-0.2	-0.2	0	0.2	0	0.2	-0.2	-0.3	0.7
Special Hospital Types:													
RRC	193	1.4	0	0	-0.1	2.5	-0.5	0	0	0.6	-0.2	-1.2	-0.6
SCH	325	2	-0.2	-0.1	-0.3	0	-0.1	0	0	0	0	-0.4	0.8
MDH	162	2	-0.3	0	-0.3	0.3	-0.2	0	0	0.1	-0.1	-0.8	-5.2
SCH and RRC	124	2.1	-0.3	0	-0.2	0.3	0	0	0	0.1	0.1	-0.3	1.1
MDH and RRC	15	2	-0.3	-0.1	-0.3	0.5	-0.1	-0.1	0	0	0	-0.3	-8
Type of Ownership:													
Voluntary	1,935	1.5	0	0.1	0.1	0	0	0	0	0.1	-0.2	-1.2	-0.4
Proprietary	892	1.4	0	-0.2	-0.1	0.2	0.1	0.1	-0.1	0.1	-0.2	-1.5	-0.8
Government	542	1.5	0	-0.1	0	-0.1	0	0	0	0	-0.1	-2	-1.4
Medicare Utilization as a Percent of Inpatient Days:													
0-25	501	1.4	0	0.1	0.2	-0.3	0	0	0	0	-0.1	-3	-2.3
25-50	2,081	1.4	0	0	0	-0.1	0	0	0	0.1	-0.2	-1.2	-0.4
50-65	601	1.6	-0.1	-0.1	-0.1	0.8	0.1	0.2	0	0.1	-0.2	-0.6	0
Over 65	93	1.6	-0.2	-0.2	-0.3	0.2	0.5	-0.1	0	0.2	-0.2	-0.6	-0.6
FY 2015 Reclassifications by the Medicare Geographic Classification Review Board:													
All Reclassified Hospitals	719	1.5	0	0	0	2.4	0.1	0	-0.1	0	-0.2	-1.1	-0.1
Non-Reclassified Hospitals	2,677	1.4	0	0	0	-0.7	0	0	0	0.1	-0.2	-1.4	-0.7
Urban Hospitals Reclassified	450	1.4	0	0	0.1	2.4	0.2	0	-0.1	0	-0.2	-1.2	-0.1
Urban Nonreclassified Hospitals, FY 2015	2,054	1.4	0	0	0	-0.8	0	0	0	0.1	-0.2	-1.4	-0.7
All Rural Hospitals Reclassified FY 2015	269	1.8	-0.2	0	-0.1	2.5	-0.3	0.1	0	0	-0.1	-0.9	-0.2
Rural Nonreclassified Hospitals FY 2015	514	1.9	-0.3	0	-0.3	-0.1	-0.2	-0.1	0	0.3	0.1	-0.9	-0.8
All Section 401 Reclassified Hospitals	50	1.9	-0.2	-0.1	-0.4	-0.4	-0.1	-0.4	0.2	2	0	-0.6	-1.1

	No. of Hospitals[1] (1)	Hospital Rate Update and Documentation and Coding Adjustment[2] (2)	FY 2015 Weights and DRG Changes with Application of Recalibration Budget Neutrality[3] (3)	FY 2015 Wage Data with Application of Wage Budget Neutrality[4] (4)	FY 2015 DRG, Rel. Wts., Wage Index Changes with Wage and Recalibration Budget Neutrality[5] (5)	FY 2015 MGCRB Reclassifications[6] (6)	Rural Floor and Imputed Floor with Application of National Rural Floor Budget Neutrality[7] (7)	Impact of the New OMB CBSA Designations[8] (8)	Application of the CBSA Transition Wage Index with Budget Neutrality[9] (9)	Application of the Frontier Wage Index and Out-Migration Adjustment[10] (10)	Hospital Readmissions Reduction Program[11] (11)	Changes to Medicare DSH[12] (12)	All FY 2015 Changes[13] (13)
Other Reclassified Hospitals (Section 1886(d)(8)(B))	64	1.6	-0.2	0.3	0	3.1	-0.5	0.2	0.1	0.1	-0.1	-1.2	-1.9
Specialty Hospitals													
Cardiac specialty Hospitals	15	1.4	0.9	0.1	1.1	-0.9	-0.1	0.1	-0.1	0.7	0	-0.1	1.9

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 2013, and hospital cost report data are from reporting periods beginning in FY 2012 and FY 2011.

[2] This column displays the payment impact of the hospital rate update and the documentation and coding adjustment including the 2.2 percent adjustment to the national standardized amount and hospital-specific rate (the estimated 2.9 percent market basket update reduced by the 0.5 percentage point for the multifactor productivity adjustment and the 0.2 percentage point reduction under the Affordable Care Act) and the 0.8 percent documentation and coding adjustment to the national standardized amount.

[3] This column displays the payment impact of the changes to the Version 32.0 GROUPER, the changes to the relative weights and the recalibration of the MS-DRG weights based on the corrected FY 2013 MedPAR data in accordance with section 1886(d)(4)(C)(iii) of the Act. This column displays the application of the recalibration budget neutrality factor of 0.998761 in accordance with section 1886(d)(4)(C)(iii) of the Act.

[4] This column displays the payment impact of the update to wage index data using FY 2011 cost report data and the new OMB labor market area delineations. This column displays the payment impact of the application of the wage budget neutrality factor, which is calculated separately from the recalibration budget neutrality factor, and is calculated in accordance with section 1886(d)(3)(E)(i) of the Act. The wage budget neutrality factor is 1.001421.

[5] This column displays the combined payment impact of the changes in Columns 3 through 4 and the cumulative budget neutrality factor for MS-DRG and wage changes in accordance with section 1886(d)(4)(C)(iii) of the Act and section 1886(d)(3)(E) of the Act. The cumulative wage and recalibration budget neutrality factor of 1.000180 is the product of the wage budget neutrality factor and the recalibration budget neutrality factor.

[6] Shown here are the effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB) along with the effects of the adoption of the new OMB labor market area delineations on these reclassifications. The effects demonstrate the FY 2015 payment impact of going from no reclassifications to the reclassifications scheduled to be in effect for FY 2015. Reclassification for prior years has no bearing on the payment impacts shown here. This column reflects the geographic budget neutrality factor of 0.990429.

[7] This column displays the effects of the rural floor and imputed floor based on the adoption of new OMB labor market area delineations. The Affordable Care Act requires the rural floor budget neutrality adjustment to be 100 percent national level adjustment. The rural floor budget neutrality factor (which includes the imputed floor) applied to the wage index is 0.989525.

[8] This column displays the effects of the adoption of the new OMB labor market area delineations. It does not reflect the 3-year transition for hospitals that are currently located in urban counties that would become rural under the new OMB delineations and the 1-year transition to the new OMB delineations where the wage indexes are blended such that hospitals receive 50 percent of their wage index based on the new OMB delineations, and 50 percent of their wage index based on their current labor market area. Rather, it shows the impact of the new OMB delineations fully implemented in FY 2015.

[9] This column shows the effects of both the 3-year transition for hospitals that are currently located in urban counties that become rural under the new OMB delineations, and the 50/50 blended wage index adjustments in a budget neutral manner. For FY 2015, we are applying both the 3-year transition and 50/50 blended wage index adjustments in a budget neutral manner, with a budget neutrality factor of 0.998854 applied to the standardized amount.

[10] This column shows the combined impact of the policy required under section 10324 of the Affordable Care Act that hospitals located in frontier States have a wage index no less than 1.0 and of section 1886(d)(13) of the Act, as added by section 505 of Pub. L. 108-173, which provides for an increase in a hospital's wage index if a threshold percentage of residents of the county where the hospital is located commute to work at hospitals in counties with higher wage indexes. These are nonbudget neutral policies.

[11] This column displays the impact of the implementation of the Hospital Readmissions Reduction Program, section 3025 of the Affordable Care Act, a nonbudget neutral provision that adjusts a hospital's payment for excess readmissions.

[12] This column displays the impact of the implementation of section 3133 of the Affordable Care Act that reduces Medicare DSH payments by 75 percent and establishes an additional uncompensated care payment.

[13] This column shows the changes in payments from FY 2014 to FY 2015. It reflects the impact of the FY 2015 hospital update and the adjustment for documentation and coding. It also reflects changes in hospitals' reclassification status in FY 2015 compared to FY 2014, and the extension of MDH payment status for the first half of FY 2015, under Pub. L. 113-93 enacted on April 1, 2014. It incorporates all of the changes displayed in Columns 2, 5, 6, 7, 8, 9, 10, 11, and 12 (the changes displayed in Columns 3 and 4 are included in Column 5). The sum of these impacts may be different from the percentage changes shown here due to rounding and interactive effects.

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4. On page 50420:

a. First column, last partial paragraph, last line, the figure ''0.997543'' is corrected to read ''0.998761''.

b. Second column, first partial paragraph, line 6, the figure ''0.3'' is corrected to read ''0.2''.

c. Third column:

(1) First full paragraph, line 26, the figure ''1.001443'' is corrected to read ''1.001421''.

(2) Last partial paragraph, line 6, the phrase ''2 urban hospital'' is corrected to read ''2 urban hospitals''.

5. On page 50421, bottom half of the page:

a. First column, first full paragraph:

(1) Line 9, the figure ''1.001443'' is corrected to read ''1.001421''.

(2) Line 11, the figure ''0.997543'' is corrected to read ''0.998761''.

(3) Line 18, the figures ''0.998982'' and ''0.10'' are corrected to read ''1.000180'' and ''0.018'', respectively.

b. Second column, second full paragraph:

(1) Line 6, the figure ''0.990406'' is corrected to read ''0.990429''.

(2) Line 13, the figure ''1.5'' is corrected to read ''1.6''.

c. Third column, first full paragraph, line 8, the figure ''0.989507'' is corrected to read ''0.989525''.

6. On page 50422:

a. First column, second partial paragraph:

(1) Line 1, the figure ''422'' is corrected to read ''423''.

(2) Line 3, the figure ''2,974'' is corrected to read ''2,973''.

(3) Line 6, the figure ''0.989507'' is corrected to read ''0.989525''.

b. Second column:

(1) First paragraph, line 23, the phrase, ''this final rule for a complere'' is corrected to read ''this final rule for a complete''.

(2) Second paragraph, line 8, the figure ''0.991291'' is corrected to read ''0.991293''.

(3) Last paragraph, line 7, the figure ''1.121'' is corrected to read ''1.1093''.

(4) Last paragraph, last line, the figure ''$1.9'' is corrected to read ''$1.8''.

7. On page 50423, the table titled ''FY 2015 IPPS Estimated Payments Due to Rural Floor and Imputed Floor with National Budget Neutrality'' is corrected to read as follows:

FY 2015 IPPS Estimated Payments Due to Rural Floor and Imputed Floor With National Budget Neutrality

State	Number of hospitals (1)	Number of hospitals that will receive the rural floor or imputed floor (2)	Percent change in payments due to application of rural floor and imputed floor with budget neutrality (3)	Difference (in millions) (4)
Alabama	91	2	−0.5	−8.4
Alaska	6	4	1.5	2.2
Arizona	57	9	−0.1	−1.9
Arkansas	45	0	−0.5	−5.3
California	309	200	1.9	190.2
Colorado	47	6	0.2	2.3
Connecticut	31	8	−0.4	−6.6
Delaware	6	0	−0.6	−2.4
Washington, D.C	7	0	−0.6	−2.6
Florida	169	25	−0.3	−18.7
Georgia	106	0	−0.5	−13.2
Hawaii	12	0	−0.4	−1.3
Idaho	14	0	−0.4	−1.2
Illinois	127	0	−0.6	−28.0
Indiana	91	0	−0.6	−13.2
Iowa	34	0	−0.5	−4.5
Kansas	53	0	−0.4	−3.8
Kentucky	65	1	−0.5	−7.9
Louisiana	100	0	−0.5	−7.0
Maine	20	0	−0.5	−2.5
Massachusetts	61	51	4.9	156.4
Michigan	95	0	−0.5	−23.2
Minnesota	51	0	−0.5	−10.1
Mississippi	64	0	−0.5	−5.3
Missouri	78	0	−0.5	−11.2
Montana	12	4	−0.3	−0.8
Nebraska	23	0	−0.4	−2.6
Nevada	24	6	0.7	4.7
New Hampshire	13	9	2.2	10.5
New Jersey	64	15	0.1	2.7
New Mexico	25	2	−0.3	−1.1
New York	163	0	−0.6	−48.9
North Carolina	87	0	−0.5	−15.9
North Dakota	6	1	−0.3	−0.8
Ohio	135	10	−0.4	−16.9
Oklahoma	86	2	−0.5	−5.7
Oregon	33	0	−0.5	−4.8
Pennsylvania	154	10	−0.5	−23.3
Puerto Rico	52	11	0	−0.1
Rhode Island	11	4	0.5	1.8
South Carolina	55	7	−0.3	−5.1
South Dakota	19	0	−0.3	−1.1
Tennessee	98	16	−0.2	−5.6
Texas	324	6	−0.5	−30.1
Utah	33	2	−0.4	−2.2

FY 2015 IPPS ESTIMATED PAYMENTS DUE TO RURAL FLOOR AND IMPUTED FLOOR WITH NATIONAL BUDGET NEUTRALITY—Continued

State	Number of hospitals (1)	Number of hospitals that will receive the rural floor or imputed floor (2)	Percent change in payments due to application of rural floor and imputed floor with budget neutrality (3)	Difference (in millions) (4)
Vermont	6	0	−0.3	−0.7
Virginia	79	1	−0.5	−12.0
Washington	49	8	−0.2	−3.1
West Virginia	30	0	−0.4	−3.2
Wisconsin	65	2	−0.5	−8.6
Wyoming	11	1	−0.2	−0.3

8. On page 50424:

a. Second column, first partial paragraph, line 9, the figure ''0.998859'' is corrected to read ''0.998854''.

b. Third column, first full paragraph, line 18, the figure ''273'' is corrected to read ''279''.

9. On page 50425:

a. First column, first partial paragraph, last line, the figure ''$424'' is corrected to read ''$428''.

b. Second column, first full paragraph, line 1, the phrase ''Rural West South'' is corrected to read ''Rural West North''.

c. Third column:

(1) First partial paragraph, line 6, the figure ''5.71'' is corrected to read ''5.68''.

(2) First full paragraph, line 14, the figure ''0.7'' is corrected to read ''0.6''.

10. On pages 50426 and 50427, the table titled ''Table II.—Impact Analysis of Changes for FY 2015 Acute Care Hospital Operating Prospective Payment System (Payments Per Discharge)'' is corrected to read as follows:

TABLE II—IMPACT ANALYSIS OF CHANGES FOR FY 2015 ACUTE CARE HOSPITAL OPERATING PROSPECTIVE PAYMENT SYSTEM

[Payments per discharge]

	Number of hospitals (1)	Estimated average FY 2014 payment per discharge (2)	Estimated average FY 2015 payment per discharge (3)	All FY 2015 changes (4)
All Hospitals	3,396	11,249	11,184	−0.6
By Geographic Location:				
Urban hospitals	2,549	11,625	11,557	−0.6
Large urban areas	1,401	12,377	12,308	−0.6
Other urban areas	1,148	10,709	10,643	−0.6
Rural hospitals	847	8,240	8,194	−0.6
Bed Size (Urban):				
0–99 beds	666	9,088	9,061	−0.3
100–199 beds	787	9,747	9,682	−0.7
200–299 beds	455	10,507	10,489	−0.2
300–499 beds	429	11,951	11,875	−0.6
500 or more beds	212	14,309	14,198	−0.8
Bed Size (Rural):				
0–49 beds	328	6,778	6,701	−1.1
50–99 beds	305	7,803	7,692	−1.4
100–149 beds	125	8,113	8,109	0
150–199 beds	50	8,857	8,819	−0.4
200 or more beds	39	9,988	10,027	0.4
Urban by Region:				
New England	120	12,806	12,802	0
Middle Atlantic	324	12,914	12,905	−0.1
South Atlantic	407	10,453	10,359	−0.9
East North Central	397	10,849	10,790	−0.5
East South Central	153	10,052	9,922	−1.3
West North Central	162	11,355	11,314	−0.4
West South Central	387	10,677	10,500	−1.7
Mountain	162	11,935	11,835	−0.8
Pacific	385	14,691	14,708	0.1
Puerto Rico	52	8,218	7,620	−7.3
Rural by Region:				
New England	22	11,207	11,110	−0.9

TABLE II—IMPACT ANALYSIS OF CHANGES FOR FY 2015 ACUTE CARE HOSPITAL OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Payments per discharge]

	Number of hospitals	Estimated average FY 2014 payment per discharge	Estimated average FY 2015 payment per discharge	All FY 2015 changes
	(1)	(2)	(3)	(4)
Middle Atlantic	57	8,292	8,231	−0.7
South Atlantic	132	7,836	7,772	−0.8
East North Central	116	8,475	8,496	0.2
East South Central	165	7,513	7,409	−1.4
West North Central	102	8,914	8,941	0.3
West South Central	168	7,108	6,978	−1.8
Mountain	61	9,454	9,509	0.6
Pacific	24	11,083	11,221	1.3
By Payment Classification:				
Urban hospitals	2,563	11,609	11,541	−0.6
Large urban areas	1,413	12,366	12,296	−0.6
Other urban areas	1,150	10,677	10,611	−0.6
Rural areas	833	8,457	8,411	−0.5
Teaching Status:				
Nonteaching	2,357	9,343	9,300	−0.5
Fewer than 100 residents	795	10,978	10,920	−0.5
100 or more residents	244	16,533	16,399	−0.8
Urban DSH:				
Non-DSH	679	9,836	9,899	0.6
100 or more beds	1,588	12,055	11,960	−0.8
Less than 100 beds	383	8,434	8,375	−0.7
Rural DSH:				
SCH	373	7,907	7,867	−0.5
RRC	212	9,194	9,175	−0.2
100 or more beds	24	7,395	7,305	−1.2
Less than 100 beds	137	6,329	6,253	−1.2
Urban teaching and DSH:				
Both teaching and DSH	842	13,277	13,167	−0.8
Teaching and no DSH	133	11,130	11,230	0.9
No teaching and DSH	1,129	9,781	9,713	−0.7
No teaching and no DSH	459	9,223	9,289	0.7
Special Hospital Types:				
RRC	193	9,403	9,350	−0.6
SCH	325	9,577	9,654	0.8
MDH	162	7,072	6,706	−5.2
SCH and RRC	124	10,293	10,410	1.1
MDH and RRC	15	9,195	8,458	−8
Type of Ownership:				
Voluntary	1,935	11,377	11,334	−0.4
Proprietary	892	10,001	9,919	−0.8
Government	542	12,283	12,113	−1.4
Medicare Utilization as a Percent of Inpatient Days:				
0–25	501	14,885	14,544	−2.3
25–50	2,081	11,359	11,311	−0.4
50–65	601	9,146	9,145	0
Over 65	93	8,408	8,353	−0.6
FY 2015 Reclassifications by the Medicare Geographic Classification Review Board:				
All Reclassified Hospitals	719	10,843	10,829	−0.1
Non-Reclassified Hospitals	2,677	11,379	11,298	−0.7
Urban Hospitals Reclassified	450	11,514	11,502	−0.1
Urban Nonreclassified Hospitals, FY 2015:	2,054	11,675	11,593	−0.7
All Rural Hospitals Reclassified FY 2015:	269	8,734	8,713	−0.2
Rural Nonreclassified Hospitals FY 2015:	514	7,667	7,606	−0.8
All Section 401 Reclassified Hospitals:	50	10,137	10,025	−1.1
Other Reclassified Hospitals (Section 1886(d)(8)(B))	64	7,814	7,665	−1.9
Specialty Hospitals:				
Cardiac specialty Hospitals	15	12,303	12,538	1.9

11. On page 50428, first column, first paragraph, lines 31 through 35, the sentence ''Based on the applicant's estimate from FY 2013, we currently estimate that new technology add-on payments for Voraxaze® will increase overall FY 2015 payments by $6,300,000.'' is corrected to read ''Based on the latest data from the

manufacturer, we currently estimate that new technology add-on payments for Voraxaze® will increase overall FY 2015 payments by $6,615,000.''

12. On page 50429:

a. First column, second paragraph, line 6, the figure ''$5.3'' is corrected to read ''$8.8''.

b. First column, third paragraph, line 16, the figure ''166'' is corrected to read ''116''.

c. Second column, first partial paragraph, line 4, the figure ''$70.7'' is corrected to read ''$71''.

13. On page 50435, upper three-fourths of the page:

a. First column, fourth bulleted paragraph:

(1) Line 4, the figure ''0.9986'' is corrected to read ''0.9993''.

(2) Line 5, the figure ''0.9373'' is corrected to read ''0.9382''.

b. Second column, first partial paragraph, line 2, the figure''1.2'' is corrected to read ''1.3''.

c. Third column:

(1) Second full paragraph, second sentence, is corrected to read, ''The increase in capital payments for voluntary and proprietary hospitals is estimated at 1.5 percent, and for government hospitals the increase is estimated to be 1.3 percent.''

(2) Third full paragraph:

(a) Line 20, the figure ''0.7'' is corrected to read ''0.8''.

(b) Line 24, the figure ''(2.2 percent)'' is corrected to read ''(2.3 percent)''.

14. On pages 50435 through 50437, the table titled, ''Table III. Comparison of Total Payments Per Case'' is corrected to read as follows:

TABLE III—COMPARISON OF TOTAL PAYMENTS PER CASE

[FY 2014 payments compared to FY 2015 payments]

	Number of hospitals	Average FY 2014 payments/ case	Average FY 2015 payments/ case	Change
By Geographic Location:				
All hospitals	3,396	856	869	1.5
Large urban areas (populations over 1 million)	1,401	944	959	1.7
Other urban areas (populations of 1 million or fewer)	1,148	824	835	1.4
Rural areas	847	583	589	1.0
Urban hospitals	2,549	890	903	1.5
0–99 beds	666	733	740	0.9
100–199 beds	787	772	783	1.5
200–299 beds	455	812	826	1.8
300–499 beds	429	907	922	1.6
500 or more beds	212	1,066	1,081	1.5
Rural hospitals	847	583	589	1.0
0–49 beds	328	474	480	1.2
50–99 beds	305	542	546	0.8
100–149 beds	125	582	588	1.1
150–199 beds	50	636	643	1.1
200 or more beds	39	709	717	1.1
By Region:				
Urban by Region	2,549	890	903	1.5
New England	120	984	1,001	1.7
Middle Atlantic	324	958	977	1.9
South Atlantic	407	802	812	1.3
East North Central	397	856	867	1.3
East South Central	153	764	772	1.0
West North Central	162	880	892	1.4
West South Central	387	823	831	0.9
Mountain	162	907	918	1.2
Pacific	385	1,120	1,148	2.4
Puerto Rico	52	408	412	1.2
Rural by Region	847	583	589	1.0
New England	22	812	823	1.4
Middle Atlantic	57	566	575	1.7
South Atlantic	132	555	559	0.7
East North Central	116	607	613	1.1
East South Central	165	534	539	0.9
West North Central	102	619	624	0.9
West South Central	168	515	519	0.8
Mountain	61	653	657	0.5
Pacific	24	749	767	2.4
Puerto Rico	0	0	0	0.0
By Payment Classification:				
All hospitals	3,396	856	869	1.5
Large urban areas (populations over 1 million)	1,413	943	959	1.7
Other urban areas (populations of 1 million or fewer)	1,150	823	835	1.4
Rural areas	833	594	599	0.8
Teaching Status:				
Non-teaching	2,357	728	738	1.5
Fewer than 100 Residents	795	837	850	1.5
100 or more Residents	244	1,210	1,229	1.6
Urban DSH:				
100 or more beds	1,588	911	925	1.6
Less than 100 beds	383	649	657	1.1

TABLE III—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued

[FY 2014 payments compared to FY 2015 payments]

	Number of hospitals	Average FY 2014 payments/ case	Average FY 2015 payments/ case	Change
Rural DSH:				
Sole Community (SCH/EACH)	373	530	535	1.1
Referral Center (RRC/EACH)	212	656	661	0.8
Other Rural:				
100 or more beds	24	552	552	0.0
Less than 100 beds	137	465	469	1.0
Urban teaching and DSH:				
Both teaching and DSH	842	990	1,005	1.5
Teaching and no DSH	133	891	907	1.8
No teaching and DSH	1,129	762	774	1.6
No teaching and no DSH	459	788	799	1.4
Rural Hospital Types:				
Non special status hospitals	2,575	890	903	1.5
RRC/EACH	193	717	730	1.8
SCH/EACH	325	652	659	1.1
SCH, RRC and EACH	124	711	720	1.3
Hospitals Reclassified by the Medicare Geographic Classification Review Board:				
FY2015 Reclassifications:				
All Urban Reclassified	450	886	904	2.1
All Urban Non-Reclassified	2,054	893	906	1.4
All Rural Reclassified	269	621	628	1.0
All Rural Non-Reclassified	514	533	537	0.8
Other Reclassified Hospitals (Section 1886(d)(8)(B))	59	581	595	2.3
Type of Ownership:				
Voluntary	1,935	868	882	1.5
Proprietary	892	776	787	1.5
Government	542	895	907	1.3
Medicare Utilization as a Percent of Inpatient Days:				
0–25	501	1,022	1,037	1.4
25–50	2,081	871	884	1.5
50–65	601	717	728	1.6
Over 65	93	648	654	1.0

a. Upper three-fourths of the page:

(1) Second column, first paragraph:

(a) Line 2, the figure ''$654'' is corrected to read ''$623''.

(b) Line 14, the figure ''$457'' is corrected to read ''$428''.

(c) Line 22, the figure ''$369'' is corrected to read ''$373''.

(d) Line 44, the figure ''$457'' is corrected to read ''$428''.

(e) Line 45, the figure ''$888'' is corrected to read ''$862''.

(f) Line 51, the figure ''$132'' is corrected to read ''$128''.

(g) Line 55, the figure ''$756'' is corrected to read ''$734''.

(2) Third column, last paragraph, last line, the figure ''$756'' is corrected to read ''$734''.

b. Lower quarter of the page, the table titled ''Table V.—Accounting Statement: Classification of Estimated Expenditures under the IPPS from FY 2014 to FY 2015'' is corrected to read as follows:

TABLE V—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES UNDER THE IPPS FROM FY 2014 TO FY 2015

Category	Transfers
Annualized Monetized Transfers.	−$734 million.
From Whom to Whom	Federal Government to IPPS Medicare Providers.

Dated: September 30, 2014.

Oliver Potts,

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

[FR Doc. 2014–23630 Filed 10–1–14; 11:15 am]

BILLING CODE 4120–01–P

Proposed Rules

Federal Register
Vol. 79, No. 192
Friday, October 3, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2014–0102]

RIN 3150–AJ40

List of Approved Spent Fuel Storage Casks: Holtec International HI-STORM FLOOD/WIND System; Certificate of Compliance No. 1032, Amendment No. 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by revising the Holtec International HI-STORM FLOOD/WIND (FW) System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 1 to Certificate of Compliance (CoC) No. 1032. Amendment No. 1 adds a new heat load pattern for the multipurpose canister (MPC)–37, broadens the back pressure range for MPC–37 and MPC–89, and updates certain definitions related to fuel classification. Also, the amendment makes a correction to the expiration date of CoC No. 1032.

DATES: Submit comments by November 3, 2014. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0102. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Naiem S. Tanious, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6103, email: *Naiem.Tanious@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket IDNRC–2014–0102 when contacting the NRC about the availability of information for this proposed rule. You may obtain publicly-available information related to this proposed rule by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0102.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0102 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Procedural Background

This proposed rule is limited to the changes contained in Amendment No. 1 to CoC No. 1032 and does not include other aspects of the Holtec International HI-STORM FW System design. Because the NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on December 17, 2014. However, if the NRC receives significant adverse comments on this proposed rule by November 3, 2014, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the

NRC will address the comments received in response to these proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or Technical Specifications.

For additional procedural information, the regulatory analysis, and the environmental assessment and finding of no significant impact, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that ''the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR) entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled, ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on June 8, 2011 (76 FR 33121) that approved the Holtec International HI–STORM FW System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1032.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No.
CoC No. 1032, Amendment No. 1.	ML14118A466.
Technical Specifications, Appendix A.	ML14118A468.
Technical Specifications, Appendix B.	ML14118A467.
Safety Evaluation Report	ML14118A469.
Application	ML11290A019.
Application Supplemental May 23, 2012.	ML12158A558.
Application Supplemental January 24, 2013.	ML13028A103.
Application Supplemental April 18, 2013.	ML13120A505.
Application Supplemental July 23, 2013.	ML13217A050.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2014–0102. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: 1) Navigate to the docket folder (NRC–2014–0102); 2) click the ''Sign up for Email Alerts'' link; and 3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2273, 2282, 2021); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 131, 132, 133, 135, 137, 141, 148 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 549 (2005).

Section 72.44(g) also issued under Nuclear Waste Policy Act secs. 142(b) and 148(c), (d) (42 U.S.C. 10162(b), 10168(c), (d)).

Section 72.46 also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154).

Section 72.96(d) also issued under Nuclear Waste Policy Act sec. 145(g) (42 U.S.C. 10165(g)).

Subpart J also issued under Nuclear Waste Policy Act secs. 117(a), 141(h) (42 U.S.C. 10137(a), 10161(h)).

Subpart K also issued under sec. 218(a) (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance No. 1032 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1032.

Initial Certificate Effective Date: June 13, 2011.

Amendment Number 1 Effective Date: December 17, 2014.

SAR Submitted by: Holtec International, Inc.

SAR Title: Final Safety Analysis Report for the HI–STORM FW System.

Docket Number: 72–1032.

Certificate Expiration Date: June 12, 2031.

Model Number: HI–STORM FW MPC–37, MPC–89.

Dated at Rockville, Maryland, this 18th day of September 2014.

For the Nuclear Regulatory Commission.

Mark A. Satorius,

Executive Director for Operations.

[FR Doc. 2014–23631 Filed 10–2–14; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0489; Directorate Identifier 2008–SW–003–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: We are revising and reopening the comment period for an earlier notice of proposed rulemaking (NPRM) for certain Bell Helicopter Textron Canada Limited (Bell) Model 206L–3 and 206L–4 helicopters. The NPRM proposes to require installing a placard and revising the limitations section of the rotorcraft flight manual (RFM). The NPRM was prompted by several incidents of third stage engine turbine wheel failures caused by excessive vibrations at certain engine speeds during steady-state operations. This action proposes to revise the NPRM by adding certain Model 206L1 helicopters to the applicability, excluding certain Model 206L3 and 206L4 helicopters from the applicability, and changing the procedures for updating the RFM. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this SNPRM by December 2, 2014.

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

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

Examining the AD Docket

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

For service information identified in this proposed AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: James Blyn, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *james.blyn@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

We issued an NPRM to amend 14 CFR part 39 to add an airworthiness directive (AD) that would apply to certain Bell Model 206L–3 and 206L–4 helicopters. The NPRM was published in the **Federal Register** on June 7, 2013 (78 FR 34282). The NPRM proposed to require installing a placard on the instrument panel below the dual tachometer and revising the Operating Limitations section of the Model 206L3 and 206L4 RFMs by inserting pages that limit steady-state operations between speeds of 71.8% and 91.5%.

The NPRM was prompted by Transport Canada Civil Aviation (TCCA) AD No. CF–2005–28R1, dated June 14, 2007, to correct an unsafe condition for certain Model 206L–3 and 206L–4 helicopters. TCCA, which is the aviation authority for Canada, advises of several failures of third stage turbine wheels used in Rolls-Royce 250–C30S and 250–C47B engines. According to TCCA, Rolls-Royce determined that detrimental vibrations can occur within a particular range of turbine speeds, and may be a contributing factor to these failures. Bell has revised the RFM and provided a corresponding decal to inform pilots to avoid steady-state operations between 71.8% and 91.5% turbine speeds. The TCCA AD requires amending the RFMs, advising pilots of the change, and installing a decal as described in Bell Alert Service Bulletin (ASB) No. 206L–05–134, dated June 8, 2005, or later revisions.

Actions Since Previous NPRM was Issued

Since we issued the NPRM (78 FR 34282, June 7, 2013), we determined that Bell Model 206L1 helicopters with Engine Upgrade Kit Part Number (P/N) 206–706–520 installed should be included in the applicability. Engine Upgrade Kit P/N 206–706–520 replaces the Rolls-Royce 250–C28B engine with a Rolls-Royce 250–C30P engine. The condition causing the failures of third stage turbine wheels used in Rolls-Royce 250–C30S and 250–C–47B engines could also exist in Rolls-Royce 250–C30P engines. Lastly, we have determined that Bell Model 206L3 and 206L4 helicopters having Rolls-Royce 250–C20R engines installed under Supplemental Type Certificate (STC) number SR00036SE are exempt from the requirements of the proposed AD because that engine is not affected by the unsafe condition. This SNPRM also changes the procedures for modifying the RFM Limitations Section from inserting revised pages to making pen and ink changes.

Comments

We gave the public the opportunity to comment on the previous NPRM (78 FR 34282, June 7, 2013), and we received a comment from one commenter.

Request

Rolls-Royce Corporation requested that in addition to requiring the placard on the instrument panel, we allow operators the option to temporarily mark the N_r/N_p gauge with colored tape to provide a more visual aide to the pilot for the speed avoidance zone.

We disagree. Marking the glass surface of the gauge can create parallax issues when viewing the avoidance ranges on the gauge, resulting in erroneous readings.

FAA's Determination

We are proposing this SNPRM because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of these same type designs. Certain changes described above expand the scope of the original NPRM (78 FR 34282, June 7, 2013). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Related Service Information

Bell issued ASB No. 206L–05–134, Revision A, dated April 9, 2007, which describes procedures for installing a placard on the instrument panel below the main rotor RPM (Nr)/power turbine RPM (N2) dual tachometer and for inserting the RFM changes into the flight manual. Revision A of the ASB was issued to exclude Bell Model 206L–3 and 206L–4 helicopters with 250–C20R engines installed under STC No. SR00036SE from the requirements of the ASB.

Proposed Requirements of the SNPRM

This proposed AD would require installing a placard on the instrument panel below the NR/N2 dual tachometer and also requires revising the Operating Limitations section of the Model 206L3 and 206L4 RFMs to limit steady-state operations between speeds of 71.8% and 91.5%.

Differences Between This Supplemental NPRM and the TCCA AD

The TCCA AD requires compliance within 10 calendar days; this proposed AD would require compliance within 30 days. This proposed AD would be applicable to Model 206L–1 helicopters with Engine Upgrade Kit P/N 206–706–520 installed because the same unsafe condition exits on this model, and the TCCA AD is not.

Costs of Compliance

We estimate that this proposed AD would affect 616 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Based on an average labor rate of $85 per hour, amending the RFM would require about 0.5 work-hour, for a cost per helicopter of about $43 and a cost to U.S. operators of $26,488. Installing the decal would require about 0.2 work-hour, and required parts would cost $20, for a cost per helicopter of $37 and a cost to U.S. operators of $22,792. Based on these estimates, the total cost of this proposed AD would be $80 per helicopter and $49,280 for the fleet.

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bell Helicopter Textron Canada Limited (Bell): Docket No. FAA–2013–0489; Directorate Identifier 2008–SW–003–AD.

(a) Applicability

This AD applies to the following helicopters, certificated in any category:

(1) Bell Model 206L–1 with an Engine Upgrade Kit Part Number (P/N) No. 206–706–520–101 installed;

(2) Bell Model 206L–3, serial number (S/N) 51001 through 51612, except those with a Rolls-Royce 250–C20R engine installed under Supplemental Type Certificate (STC) No. SR00036SE; and

(3) Bell Model 206L–4, S/N 52001 through 52313, except those with a Rolls-Royce 250–C20R engine installed under STC No. SR00036SE.

(b) Unsafe Condition

This AD defines the unsafe condition as a third stage turbine vibration, which could result in turbine failure, engine power loss, and subsequent loss of control of the helicopter.

(c) Comments Due Date

We must receive comments by December 2, 2014.

(d) Compliance

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

(e) Required Actions

Within 30 days:

(1) Install placard P/N 230–075–213–117, or equivalent, on the instrument panel directly below the dual tachometer.

(2) Revise the Operating Limitations section of the Rotorcraft Flight Manual (RFM) by inserting a copy of this AD into the RFM or by making pen and ink changes as follows:

(i) In the Power Plant section, beneath the Power Turbine RPM header, add: Avoid continuous operations 71.8% to 91.5%.

(ii) In the Placards and Decals section, add: AVOID CONT OPS 71.8% TO 91.5% N2'' with the location identification ''Location: Instrument Panel.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: James Blyn, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *james.blyn@faa.gov.*

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

(g) Additional Information

(1) Bell Alert Service Bulletin No. 206L–05–134, Revision A, dated April 9, 2007, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in Transport Canada Civil Aviation (TCCA) AD No. CF–2005–28R1, dated June 14, 2007. You may view the TCCA AD at *http://www.regulations.gov* in Docket No. FAA–2013–0489.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 7250, Turbine Section.

Issued in Fort Worth, Texas, on September 17, 2014.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–23582 Filed 10–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0758; Directorate Identifier 2013–SW–062–AD]

RIN 2120–AA64

Airworthiness Directives; Kaman Aerospace Corporation (Kaman) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Kaman Model K–1200 helicopters with certain main rotor blades (MRB) installed. This proposed AD would require inspecting each MRB for a crack or damage. This proposed AD is prompted by a report that a crack was found on an MRB during a tear-down inspection. The proposed actions are intended to detect a crack in the MRB, which could lead to failure of the MRB and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by December 2, 2014.

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

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

Examining the AD Docket

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

For service information identified in this proposed AD, contact Kaman Aerospace Corporation, Old Windsor Rd., P.O. Box 2, Bloomfield, CT 06002–0002; telephone (860) 242–4461; fax (860) 243–7047; or at *http://www.kamanaero.com.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth Texas 76137.

FOR FURTHER INFORMATION CONTACT: Nicholas Faust, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7763; email *nicholas.faust@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is

possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

We are proposing to adopt a new AD for Kaman Model K–1200 helicopters with an MRB, part number (P/N) K911001–009, K911001–010, K911001–109, or K911001–110, installed. We received reports that during x-ray and teardown inspections with the MRB removed from the helicopter, cracks are being found in the MRB spar. To detect this unsafe condition, we are proposing requiring repetitive x-ray and visual inspections of the MRB for a crack, wood split, void, or delamination at intervals not exceeding 1,000 hours time-in-service (TIS). If there is a crack, wood split, void, or delamination, the proposed AD would require repairing or replacing the MRB before further flight. The proposed AD would also require that any inspection or repair procedure performed in compliance with this AD receive prior approval from the Boston Aircraft Certification Office. The proposed actions are intended to detect a crack in the MRB, which could lead to failure of the MRB and subsequent loss of control of the helicopter.

FAA's Determination

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Related Service Information

We reviewed Kaman Maintenance Manual 04–00–00, Continued Airworthiness, Revision 31, dated August 1, 2013, which establishes the airworthiness limitations for the Model K–1200 helicopter. The airworthiness limitations establish an MRB life limit of 8,000 hours TIS and also establish a recurring 1,000 hour Rotor Blade Spar Inspection for each MRB with 3,000 or more hours TIS.

We also reviewed Kaman Maintenance Manual 05–20–06, 1,000 Hour Rotor Blade Spar Inspection, Revision 31, dated August 1, 2013, which specifies returning each MRB to Kaman every 1,000 hours for inspection after the MRB accumulates 3,000 hours TIS.

Proposed AD Requirements

This proposed AD would require performing repetitive X-Ray and visual inspections of each wooden MRB for a crack, wood split, void, or delamination at intervals not exceeding 1,000 hours TIS. If there is a crack, wood split, void, or delamination, the proposed AD would require repairing or replacing the MRB before further flight. The inspections and repairs required by the proposed AD would be accomplished by a method approved by the Manager of the Boston Aircraft Certification Office.

Costs of Compliance

We estimate that this proposed AD would affect 11 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this proposed AD. At an average labor cost of $85 per hour, inspecting each matched pair of main rotor blades would require about 160 work-hours and required parts would cost about $2,000, for a cost per MRB set of $15,600 and a cost per helicopter of $31,200 per inspection cycle. If required, repairing a cracked MRB would require about 335 work-hours and required parts would cost about $15,000, for a cost per MRB of $43,475. If required, replacing a MRB set would require about 4 work-hours, and required parts would cost about $495,000, for a cost per helicopter of $495,340.

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Kaman Aerospace Corporation Helicopters: Docket No. FAA–2014–0758; Directorate Identifier 2013–SW–062–AD.

(a) Applicability

This AD applies to Kaman Aerospace Incorporated (Kaman) Model K–1200 helicopters with a main rotor blade (MRB) part number K911001–009, K911001–010, K911001–109, or K911001–110 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in an MRB, which could lead to failure of the MRB and subsequent loss of control of the helicopter.

(c) Comments Due Date

We must receive comments by December 2, 2014.

(d) Compliance

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

(e) Required Actions

(1) Before the MRB reaches 3,000 hours time-in-service (TIS) or within 50 hours TIS,

whichever occurs later, and thereafter at intervals not exceeding 1,000 hours TIS:

(i) X-Ray inspect each MRB between station (STA) 30 and 289 for a crack, a wood split, a void, and delamination.

(ii) Using a 10× or higher power magnifying glass, inspect each spar plank between STA 33 and STA 78 for a wood split or a crack, and inspect each spar plank to plank glueline for a void or delamination.

(2) If there is a crack, wood split, void, or delamination within maximum repair damage limits in an MRB, before further flight, repair the MRB. If there is a crack, wood split, void, or delamination exceeding maximum repair damage limits in an MRB, before further flight, replace the MRB with an airworthy MRB.

(3) Each inspection and repair procedure required for compliance with Paragraphs (e)(1) and (e)(2) of this AD must be accomplished by a method approved by the Manager, Boston Aircraft Certification Office (ACO). For a repair method to be approved by the Manager, Boston ACO, as required by this AD, the Manager's approval letter must specifically refer to this AD.

(f) Alternative Methods of Compliance (AMOC)

(1) The Manager, Boston ACO, FAA, may approve AMOCs for this AD. Send your proposal to: Nicholas Faust, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7763; email *nicholas.faust@faa.gov.*

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

(g) Additional Information

Kaman Aerospace Corporation Maintenance Manual 04–00–00, Continued Airworthiness, Revision 31, dated August 1, 2013, and Kaman Aerospace Corporation Maintenance Manual 05–20–06, 1,000 Hour Rotor Blade Spar Inspection, Revision 31, dated August 1, 2013, which are not incorporated by reference, contain additional information about the subject of this AD. You may review a copy of this information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6210: Main Rotor MRB.

Issued in Fort Worth, Texas, on September 17, 2014.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–23588 Filed 10–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. FDA–2014–F–1370]

Casa de Mesquite LLC; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Casa de Mesquite LLC, proposing that the food additive regulations be amended to provide for the safe use of ionizing radiation to treat mesquite bean flour.

DATES: The food additive petition was filed on August 11, 2014.

FOR FURTHER INFORMATION CONTACT: Teresa A. Croce, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1281.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), we are giving notice that we have filed a food additive petition (FAP 4M4807), submitted by Casa de Mesquite LLC, 10021 Pacheco Pass Hwy., Hollister, CA 95023. The petition proposes to amend the food additive regulations in § 179.26 (21 CFR 179.26), *Ionizing radiation for the treatment of food,* to provide for the safe use of ionizing radiation to reduce the levels of food-borne pathogens in mesquite bean flour.

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

Dated: September 29, 2014.

Dennis M. Keefe,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 2014–23597 Filed 10–2–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 1

RIN 1505–AC43

Privacy Act, Implementation

AGENCY: Departmental Offices, Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of a proposed amendment to update its Privacy Act regulations, and to add an exemption from certain provisions of the Privacy Act for a system of records related to the Office of Intelligence and Analysis.

DATES: Comments must be received no later than November 3, 2014.

ADDRESSES: Written comments should be sent to the Director Intelligence Information Systems, Office of Intelligence and Analysis, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220. The Department will make such comments available for public inspection and copying in the Department's Library, Room 1020, Annex Building, 1500 Pennsylvania Ave. NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Standard Time. You must make an appointment to inspect comments by telephoning (202) 622–0990 (not a toll free number). You may also submit comments through the Federal rulemaking portal at *http://www.regulations.gov* (follow the instructions for submitting comments). All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Director Intelligence Information Systems, Office of Intelligence and Analysis, Department of the Treasury, at (202) 622–1826, facsimile (202) 622–1829, or email *OIAExec@treasury.gov.*

SUPPLEMENTARY INFORMATION: The Department is establishing ''Treasury/DO. 411—Intelligence Enterprise Files,'' maintained by the Office of Intelligence and Analysis.

Under 5 U.S.C. 552a(k)(1), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is subject to the provisions of 5 U.S.C. 552(b)(1), which regards matters specifically authorized under criteria established by an Executive

order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

To the extent that records in this system of records contain information subject to the provisions of 5 U.S.C. 552(b)(1), the Department of the Treasury proposes to exempt those records from the following provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1):

(1) From subsection 5 U.S.C. 552a(c)(3) (Accounting for Disclosures) because release of the accounting of disclosures of the records in this system could alert individuals whether they have been identified as a national security threat or the subject of an investigation related to the national security interests of the United States, including threats to the national security, foreign policy, or economy of the United States, to the existence of the investigation and reveal investigative interest on the part of the Department of the Treasury as well as the recipient agency. Disclosure of the accounting would present a serious impediment to efforts to protect national security interests by giving individuals an opportunity to learn whether they have been identified as suspects or subjects of a national security-related investigation. As further described in the following paragraph, access to such knowledge would impair the Department's ability to carry out its mission, since individuals could:

(i) Take steps to avoid detection;

(ii) Inform associates that an investigation is in progress;

(iii) Learn the nature of the investigation;

(iv) Learn the scope of the investigation;

(v) Begin, continue, or resume conduct that may pose a threat to national security upon inferring they may not be part of an investigation because their records were not disclosed; or

(vi) Destroy information relevant to the national security investigation.

(2) From subsection 5 U.S.C. 552a(d)(1), (d)(2), (d)(3), and (d)(4), (Access to Records) because access to a portion of the records contained in this system of records could inform individuals whether they have been identified as a national security threat or the subject of an investigation related to the national security interests of the United States, including threats to the national security, foreign policy, or economy of the United States, to the existence of the investigation and reveal investigative interest on the part of the Department of the Treasury or another agency. Access to the records would present a serious impediment to efforts to protect national security interests by permitting the individual who is the subject of a record to learn whether they have been identified as suspects or subjects of a national security-related investigation. Access to such knowledge would impair the Department's ability to carry out its mission, since individuals could take steps to impede the investigation and avoid detection or apprehension, including the steps described in paragraph (1)(i)–(vi) of this section. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. The information contained in the system may also include classified information, the release of which would pose a threat to the national security, foreign policy, or economy of the United States. In addition, permitting access and amendment to such information could disclose sensitive security information that could be detrimental to the Department of the Treasury.

(3) From subsection 5 U.S.C. 552a(e)(1), (Relevance and Necessity of Information) because in the course of its operations, OIA must be able to review information from a variety of sources. What information is relevant and necessary may not always be apparent until after the evaluation is completed. In the interests of national security, it is appropriate to include a broad range of information that may aid in identifying and assessing the nature and scope of terrorist or other threats to the United States. Additionally, investigations into potential violations of federal law, the accuracy of information obtained or introduced, occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective enforcement of federal laws, it is appropriate to retain all information that may aid in establishing patterns of suspicious or unlawful activity.

(4) From subsection 5 U.S.C. 552a(e)(4)(G), (H), and (I) (Agency Requirements), and 5 U.S.C. 552a(f), because portions of this system are exempt from the access and amendment provisions of subsection (d). The reason for invoking the exemption is to protect material authorized to be kept secret in the interest of national security, which includes threats to the national security, foreign policy, or economy of the United States, pursuant to Executive Orders 12968, 13526, successor or prior Executive Orders, and other legal authorities relevant to the intelligence responsibilities of the Department of the Treasury.

The Department of the Treasury will publish separately in the **Federal Register** a notice of a proposed system of records related to the records maintained by OIA entitled ''Treasury/DO. 411—Intelligence Enterprise Files.''

As required by Executive Order 12866, it has been determined that this rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis. Pursuant to the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities. The term ''small entity'' is defined to have the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction'' as defined in the RFA.

The proposed regulation, issued under section 552a(k) of the Privacy Act, is to exempt certain information maintained by the Department in the above system of records from notification, access, and amendment of a record by individuals. Inasmuch as the Privacy Act rights are personal, small entities, as defined in the RFA, are not provided rights under the Privacy Act and are outside the scope of this regulation.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1, subpart C of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

■ 2. Section 1.36 is amended in paragraph (e)(1)(i) by adding an entry for ''DO .411—Intelligence Enterprise Files'' to the table in numerical order.

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.

* * * * *

(e) * * *

(1) * * *

(i) * * *

Number	System name
* *	* * * *
DO .411	Intelligence Enterprise Files.

Dated: September 11, 2014.

Helen Goff Foster,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2014–23012 Filed 10–2–14; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0834]

RIN 1625–AA00

Safety Zone, Chesapeake Bay; Cape Charles, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone on the navigable waters of the Chesapeake Bay in the vicinity of Bayshore Road in the Cape Charles Harbor, Cape Charles, VA. This proposed safety zone would restrict vessel movement in the specified area during the Town of Cape Charles New Years Eve fireworks display between 10 p.m. and 10:30 p.m. on December 31, 2014. This action is necessary to provide for the safety of life and property on the surrounding navigable waters during the fireworks displays.

DATES: Comments and related material must be received by the Coast Guard on or before November 3, 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 LCDR Gregory Knoll, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone (757) 668–5580, email *HamptonRoadsWaterway@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *www.regulations.gov,* type the docket number [USCG–2014–0834] 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–2014–0834] in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. However, you may submit a request for one at least 15 days prior to the end of the comment period specified in **DATES**, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

The town of Cape Charles has not held a fireworks show for the New Year in the past. This same location is used for other fireworks displays during the year that are already in 33 CFR 165.506.

C. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

Spectator vessels may gather nearby to view the fireworks display. Due to the need for vessel control during the fireworks display, vessel traffic will be temporarily restricted to provide for the

safety of participants, spectators and transiting vessels. Under provisions of 33 CFR 165.506, during the enforcement period, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

D. Discussion of the Proposed Rule

The Captain of the Port of Hampton Roads proposes to establish a safety zone on specified waters of the Chesapeake Bay within a 700 foot radius of the position: 37°–15′–47″ N /0 076°–01′–29″ W (NAD 1983), in the vicinity of Bayshore Road in the Cape Charles Harbor, Cape Charles, Virginia. This safety zone will be enforced on December 31, 2014 between the hours of 10 p.m. and 10:30 p.m. Access to the safety zone will be restricted during the specified date and time.

Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the safety zone during the time frame listed. The Captain of the Port will give notice of the enforcement of the safety zone by all appropriate means to provide the widest dissemination of notice among the affected segments of the public. This will include publication in the Local Notice to Mariners and Marine Information Broadcasts.

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 these statutes and 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 primary impact of these regulations will be on vessels wishing to transit the affected waterways during the safety zone on the Chesapeake Bay in the vicinity of Bayshore Road in the Cape Charles Harbor, Cape Charles, VA from 10 p.m. until 10:30 p.m. on December 31, 2014. Although these regulations prevent traffic from transiting a portion of the Chesapeake Bay during this event, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in waters of the Chesapeake Bay during the outlined timeframe.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone will only be in place for a limited duration, and (ii) before the enforcement period, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

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 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 will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

This 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

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 does not create an environmental risk to health or risk to safety that may 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 does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This 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 determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a safety zone. This proposed rule is categorically excluded from further review under paragraph 34–g of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0834 to read as follows:

§ 165.T05–0834 Safety Zone, Chesapeake Bay; Cape Charles, VA.

(a) Definitions. For the purposes of this section, Captain of the Port means the Commander, Sector Hampton Roads.

Representative means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port

(b) Location. The following area is a proposed safety zone: Specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25–10, in the Chesapeake Bay in the vicinity of Bayshore Road in the Cape Charles Bay, Cape Charles, VA all waters within a 700 foot radius of 37°–15′–47″ N/076°–01′–29″ W (NAD 1983).

(c) Regulations.

(1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Contact on scene contracting vessels via VHF channel 13 and 16 for passage instructions.

(ii) If on scene proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) Enforcement Period: This section will be enforced from 10 p.m. until 10:30 p.m. on December 31, 2014.

Dated: September 16, 2014.

Christopher S. Keane,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2014–23650 Filed 10–2–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2014–0387; FRL–9917–40–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Redesignation Request and Associated Maintenance Plan for the Baltimore, Maryland Nonattainment Area for the 1997 Annual Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State of Maryland's request to redesignate to attainment the Baltimore, Maryland Nonattainment Area (Baltimore Area or Area) for the 1997 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). The EPA has determined that the Baltimore Area attained the standard and is proposing to determine that it continues to attain the standard. In addition, EPA is proposing to approve, as a revision to the Maryland State Implementation Plan (SIP), the Baltimore Area maintenance plan to show maintenance of the 1997 annual $PM_{2.5}$ NAAQS through 2025 for the Area. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and nitrogen oxides (NO_X) mobile vehicle emissions budgets (MVEBs) for the Baltimore Area for the 1997 annual $PM_{2.5}$ NAAQS, which EPA is proposing to approve for transportation conformity purposes. These actions are being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before November 3, 2014.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2014–0387 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov*.

C. *Mail:* EPA–R03–OAR–2014–0387, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2014–0387. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, Air and Radiation Management Administration, 1800 Washington Boulevard, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, at (215) 814–2308, or by email at *powers.marilyn@epa.gov*.

Table of Contents

I. Background
II. EPA's Requirements
A. Criteria for Redesignation to Attainment
B. Requirements of a Maintenance Plan
III. Summary of Proposed Actions
IV. Effects of Recent Court Decisions on Proposed Actions
A. Effect of the Supreme Court and D.C. Circuit Court's Decisions on EPA's CSAPR
B. Effect of the January 4, 2013 D.C. Circuit Court Decision Regarding the $PM_{2.5}$ Implementation under Subpart 4 of Part D of Title I of the CAA
V. EPA's Analysis of Maryland's SIP Submittal
A. Redesignation Request
B. Maintenance Plan
C. Transportation Conformity
VI. Proposed Actions
VII. Statutory and Executive Order Reviews

I. Background

The first air quality standards for $PM_{2.5}$ were established on July 18, 1997 (62 FR 38652). EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$), based on a three-year average of annual mean $PM_{2.5}$ concentrations (the 1997 annual $PM_{2.5}$ standard). In the same rulemaking, EPA promulgated a 24-hour standard of 65 $\mu g/m^3$ based on a three-year average of the 98th percentile of 24-hour concentrations.

On January 5, 2005 (70 FR 944, 1014), EPA published air quality area designations for the 1997 $PM_{2.5}$ NAAQS. In that rulemaking action, EPA designated the Baltimore Area as nonattainment for the 1997 annual $PM_{2.5}$ NAAQS. The Baltimore Area is comprised of the City of Baltimore, and Anne Arundel, Baltimore, Carroll, Harford, Howard, and Queen Anne Counties. *See* 40 CFR 81.321.

On October 17, 2006 (71 FR 61144), EPA retained the annual average standard at 15 $\mu g/m^3$ but revised the 24-hour standard to 35 $\mu g/m^3$, based again on the three-year average of the 98th percentile of the 24-hour concentrations (the 2006 24-hour $PM_{2.5}$ standard). On November 13, 2009 (74 FR 58688), EPA published designations for the 2006 24-hour $PM_{2.5}$ standard, which became effective on December 14, 2009. In that rulemaking action, EPA designated the Baltimore Area as attainment for the 2006 24-hour $PM_{2.5}$ NAAQS. *See* 74 FR 58737 and 40 CFR 81.321. Since the Baltimore Area is designated nonattainment for the annual NAAQS promulgated in 1997, today's proposed rulemaking action addresses the redesignation to attainment only for this standard.

On May 22, 2012 (77 FR 30208), EPA determined that the Baltimore Area had attained the 1997 annual $PM_{2.5}$ NAAQS, and that the Area attained the NAAQS by the statutory attainment date of April 5, 2010. Pursuant to 40 CFR 51.1004(c) and based on the determination of attainment, the requirements for the Baltimore Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning SIP revisions related to the attainment of the 1997 annual $PM_{2.5}$ NAAQS were suspended until such time as: (1) The Area is redesignated to attainment for the standard, at which time the requirements no longer apply or (2) EPA determines that the Area has again violated the standard, at which time such plans are required to be submitted.

On December 12, 2013, the State of Maryland, through the Maryland Department of the Environment (MDE), formally submitted a request to redesignate the Baltimore Area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. Concurrently, MDE submitted a maintenance plan for the Area as a SIP revision to ensure continued attainment throughout the Area over the next 10 years. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs used for transportation conformity purposes for the Baltimore Area for the 1997 annual $PM_{2.5}$ NAAQS.

II. EPA's Requirements

A. Criteria for Redesignation to Attainment

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that: (1) EPA determines that the area has attained the applicable NAAQS; (2) EPA has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions; (4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of the CAA. Each of these requirements are discussed in section V (EPA's Analysis

of Maryland's SIP Submittal) of this proposed rulemaking action.

EPA has provided guidance on redesignation in the ''State Implementation Plans; General Preamble for the Implementation of Title I of the CAA Amendments of 1990,'' (57 FR 13498, April 16, 1992) (the ''General Preamble'') and has provided further guidance on processing redesignation requests in the following documents: (1) ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the ''1992 Calcagni Memorandum''); (2) ''SIP Actions Submitted in Response to CAA Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and, (3) ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994.

B. Requirements of a Maintenance Plan

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A of the CAA, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after EPA approves the redesignation of an area to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future $PM_{2.5}$ violations.

The 1992 Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The memorandum states that a maintenance plan should address the following provisions: (1) An attainment emissions inventory; (2) a maintenance demonstration showing maintenance for 10 years; (3) a commitment to maintain the existing monitoring network; (4) verification of continued attainment; and, (5) a contingency plan to prevent or correct future violations of the NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and maintenance plans for nonattainment areas and for areas seeking redesignation to attainment for a given NAAQS. These emission control strategy SIP revisions (e.g., RFP and attainment demonstration SIP revisions) and maintenance plans create MVEBs based on onroad mobile source emissions for the relevant criteria pollutants and/or their precursors, where appropriate, to address pollution from onroad transportation sources. The MVEBs are the portions of the total allowable emissions that are allocated to onroad vehicle use that, together with emissions from all other sources in the area, will provide attainment, RFP, or maintenance, as applicable. The budget serves as a ceiling on emissions from an area's planned transportation system. Under 40 CFR part 93, an MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan.

The maintenance plan for the Baltimore Area includes 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs for transportation conformity purposes. The transportation conformity determination for the Area is further discussed in subsection C of section V (Transportation Conformity) of this proposed rulemaking action and in a technical support document (TSD) dated May 20, 2014, which is available in the docket for this proposed rulemaking action.

III. Summary of Proposed Actions

EPA is proposing to take several rulemaking actions related to the redesignation of the Baltimore Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS. EPA is proposing to find that the Baltimore Area meets the requirements for redesignation for the 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3)(E) of the CAA. EPA is proposing to approve the maintenance plan for the Baltimore Area as a revision to the Maryland SIP for the 1997 annual $PM_{2.5}$ NAAQS. Approval of the maintenance plan is one of the CAA criteria for redesignation of the Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS. The Baltimore Area maintenance plan is designed to ensure continued attainment in the Area for 10 years after redesignation. EPA is also proposing to approve the MVEBs for $PM_{2.5}$ and NO_X emissions for the 1997 annual $PM_{2.5}$ standard. In this rulemaking action, EPA is proposing to find that the Area continues to attain the standard.

EPA previously determined that the Baltimore Area had attained the 1997 annual $PM_{2.5}$ NAAQS and that it had done so by its applicable attainment date. *See* 77 FR 30208, May 22, 2012. In this rulemaking action, EPA is proposing to find that the Area continues to attain the standard. EPA is, therefore, proposing to approve MDE's request to change the designation for the Baltimore Area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS.

IV. Effects of Recent Court Decisions on Proposed Actions

In this proposed rulemaking action, EPA considers the effects of three legal decisions on this redesignation. EPA first considers the effects of the D.C. Circuit Court and U.S. Supreme Court's decisions in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), *rev'd,* No. 12–1182 (S. Ct. April 29, 2014). The Supreme Court reversed the D.C. Circuit Court decision vacating and remanding the Cross-State Air Pollution Rule (CSAPR). EPA is also considering the effect of the January 4, 2013 D.C. Circuit decision remanding to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008) (collectively, ''1997 $PM_{2.5}$ Implementation Rule''). *Natural Resources Defense Council (NRDC)* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013).

A. Effect of the Supreme Court and D.C. Circuit Court's Decisions Regarding EPA's CSAPR

EPA has considered the recent decisions from the U.S. Supreme Court and the D.C. Circuit Court regarding EPA's CSAPR, and has concluded that the decisions do not affect the Agency's proposal to redesignate the Baltimore Area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. EPA promulgated CSAPR (76 FR 48208, August 8, 2011) to replace the Clean Air Interstate Rule (CAIR), which has been in place since 2005. *See* 76 FR 59517. Both CSAPR and CAIR require significant reductions in emissions of sulfur dioxide (SO_2) and NO_X from electric generating units (EGUs) to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. The D.C. Circuit Court initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). After staying the implementation of CSAPR on December 20, 2011 and instructing EPA to continue to implement CAIR in

the interim, on August 21, 2012, the D.C. Circuit Court issued a decision to vacate CSAPR, with further instruction to continue administering CAIR ''pending the promulgation of a valid replacement.'' *EME Homer City Generation L.P.* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012). On April 29, 2014, the Supreme Court reversed the opinion of the D.C. Circuit Court and remanded the matter to the D.C. Circuit Court for further proceedings. *EPA* v. *EME Homer City Generation, L.P.,* No. 12–1182 (S. Ct. April 29, 2014).

In its submission, MDE does not rely on either CAIR or CSAPR for emission reductions that contributed to the Baltimore Area's attainment of the 1997 annual $PM_{2.5}$ NAAQS, nor does the State rely on either of the rules to show maintenance of the standard in the Area for 10 years following redesignation. However, because CAIR was promulgated in 2005 and incentivized sources and states to begin achieving early emission reductions, the air quality data examined by EPA in issuing a final determination of attainment for the Baltimore Area in 2009 (November 20, 2009, 74 FR 60119) and the air quality data from the Area since 2005 necessarily reflect reductions in emissions from upwind sources as a result of CAIR. Nonetheless, in this case EPA believes that it is appropriate to redesignate the Area. Modeling conducted by EPA during the CSAPR rulemaking process, which used a baseline emissions scenario that ''backed out'' the effects of CAIR, *see* 76 FR at 48223, projected that the counties in the Baltimore Area would have $PM_{2.5}$ annual design values [1] below the level of the 1997 annual $PM_{2.5}$ standard for 2012 and 2014 without taking into account emission reductions from CAIR or CSAPR. *See* Appendix B of EPA's ''Air Quality Modeling Final Rule Technical Support Document,'' (Page B–45, B–46), which is available in the docket for this proposed rulemaking action. In addition, the 2010–2012 quality-assured, quality-controlled, and certified monitoring data for the Baltimore Area confirms that 2012 $PM_{2.5}$ annual design values for each monitoring site in the Area remained well below the 1997 annual $PM_{2.5}$ NAAQS, and, thus, the entire Area continued to attain the standard in 2012. *See* Table 1 of this proposed rulemaking action for the Baltimore Area's monitoring data for 2010–2012.

[1] As defined in 40 CFR part 50, Appendix N, section (1)(c). A monitoring site's design value is compared to the level of the 1997 annual $PM_{2.5}$ NAAQS to determine compliance with the standard.

The status of CSAPR is not relevant to this redesignation. CSAPR was promulgated in June 2011, and the rule was stayed by the D.C. Circuit Court just six months later, before the trading programs it created were scheduled to go into effect. Therefore, the Baltimore Area's attainment of the 1997 annual $PM_{2.5}$ standard cannot have been a result of any emission reductions associated with CSAPR. In sum, neither the current status of CAIR nor the current status of CSAPR affects any of the criteria for proposed approval of this redesignation request for the Area.

B. Effect of the January 4, 2013 D.C. Circuit Court Decision Regarding $PM_{2.5}$ Implementation Under Subpart 4 of Part D of Title I of the CAA

1. Background

On January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* the D.C. Circuit Court remanded to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008) (collectively, ''1997 $PM_{2.5}$ Implementation Rule''). 706 F.3d 428 (D.C. Cir. 2013). The D.C. Circuit Court found that EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant to the general implementation provisions of subpart 1 of Part D of Title I of the CAA (subpart 1), rather than the particulate-matter-specific provisions of subpart 4 of Part D of Title I (subpart 4).

Prior to the January 4, 2013 decision, the states had worked towards meeting the air quality goals of the 1997 annual $PM_{2.5}$ NAAQS in accordance with EPA regulations and guidance derived from subpart 1. Subsequent to this decision, in rulemaking that responds to the D.C. Circuit Court's remand, EPA took this history into account by proposing to set a new deadline for any remaining submissions that may be required for moderate nonattainment areas as a result of the Court's decision regarding subpart 4.

On June 2, 2014 (79 FR 31566) EPA finalized the ''Identification of Nonattainment Classification and Deadlines for Submission of SIP Provisions for the 1997 $PM_{2.5}$ NAAQS and 2006 $PM_{2.5}$ NAAQS'' rule (the $PM_{2.5}$ Subpart 4 Classification and Deadline Rule). The rule identifies the classification under subpart 4 for areas currently designated nonattainment for the 1997 annual and/or 2006 24-hour $PM_{2.5}$ standards, and sets a new deadline for states to submit attainment-related and other SIP elements required for these areas pursuant to subpart 4. The rule also identifies EPA guidance that is currently available regarding subpart 4 requirements. The $PM_{2.5}$ Subpart 4 Classification and Deadline Rule specifies December 31, 2014 as the deadline for the states to submit any additional attainment-related SIP-elements that may be needed to meet the applicable requirements of subpart 4 for areas currently designated nonattainment for the 1997 annual and/or 2006 24-hour $PM_{2.5}$ NAAQS and to submit SIPs addressing the nonattainment NSR requirements in subpart 4. Therefore, as explained in detail in the following section, any additional attainment-related SIP elements that may be needed for the Baltimore Area to meet the applicable requirements of subpart 4 were not due at the time that Maryland submitted its redesignation request for the Area. Maryland submitted its request for redesignating the Baltimore Area for the 1997 annual $PM_{2.5}$ NAAQS on December 12, 2013.

2. Proposal on This Issue

In this proposed rulemaking action, EPA addresses the effect of the D.C. Circuit Court's January 4, 2013 ruling and the proposed $PM_{2.5}$ Subpart 4 Nonattainment Classification and Deadline Rule on the redesignation request for the Baltimore Area. EPA is proposing to determine that the D.C. Circuit Court's January 4, 2013 decision does not prevent EPA from redesignating the Baltimore Area to attainment. Even in light of the D.C. Circuit Court's decision, redesignation for the Baltimore Area is appropriate under the CAA and EPA's longstanding interpretations of the CAA provisions regarding redesignation. EPA first explains its longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Second, EPA then shows that, even if EPA applies the subpart 4 requirements to the redesignation request for the Baltimore Area and disregards the provisions of its 1997 annual $PM_{2.5}$ implementation rule remanded by the D.C. Circuit Court, the State's request for redesignation of the Baltimore Area still qualifies for approval. EPA's discussion takes into account the effect of the D.C. Circuit Court's ruling and the proposed $PM_{2.5}$ Subpart 4 Classification and Deadline Rule on the Baltimore Area maintenance plan, which EPA views as

approvable when subpart 4 requirements are considered.

a. Applicable Requirements Under Subpart 4 for Purposes of Evaluating the Redesignation Request for the Baltimore Area

With respect to the 1997 $PM_{2.5}$ Implementation Rule, the D.C. Circuit Court's January 4, 2013 ruling rejected EPA's reasons for implementing the $PM_{2.5}$ NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the 1997 annual $PM_{2.5}$ NAAQS under subpart 4, in addition to subpart 1. For the purposes of evaluating the redesignation request for the Baltimore Area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not ''applicable'' for the purposes of CAA section 107(d)(3)(E), and thus EPA is not required to consider subpart 4 requirements with respect to the redesignation of the Baltimore Area. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are ''applicable'' and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. *See* 1992 Calcagni Memorandum. *See also* ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465–66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424–27, May 12, 2003); *Sierra Club* v. *EPA,* 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club's view that the meaning of ''applicable'' under the statute is ''whatever should have been in the plan at the time of attainment rather than whatever actually was in the plan and already implemented or due at the time of attainment'').[2] In this case, at the time that the State submitted its redesignation request, the requirements under subpart 4 were not due.

EPA's view that, for purposes of evaluating the redesignation of the Baltimore Area, the subpart 4 requirements were not due at the time Maryland submitted the redesignation request is in keeping with the EPA's interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the D.C. Circuit Court's decision in *South Coast Air Quality Mgmt. Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). In *South Coast,* the D.C. Circuit Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that ''applicable requirements,'' for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. *See, e.g.,* Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those actions, EPA, therefore, did not consider subpart 2 requirements to be ''applicable'' for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E).

EPA's interpretation derives from the provisions of section 107(d)(3). Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet ''all requirements 'applicable' to the area under section 110 and part D.'' Section 107(d)(3)(E)(ii) provides that the EPA must have fully approved the ''applicable'' SIP for the area seeking redesignation. These two sections read together support EPA's interpretation of ''applicable'' as only those requirements that came due prior to submission of a complete redesignation request. First, holding states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If ''applicable requirements'' were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the CAA for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

In the context of this redesignation, the timing and nature of the D.C. Circuit Court's January 4, 2013 decision in *NRDC* v. *EPA* and EPA's $PM_{2.5}$ Subpart 4 Nonattainment Classification and Deadline Rule compound the consequences of imposing requirements that come due after the redesignation request is submitted. Maryland submitted its redesignation request for the 1997 annual $PM_{2.5}$ NAAQS on December 12, 2013, which is prior to the deadline by which the Baltimore Area is required to meet the applicable requirements pursuant to subpart 4.

To require Maryland's fully-completed and pending redesignation request for the 1997 annual $PM_{2.5}$ NAAQS to comply now with requirements of subpart 4 that the D.C. Circuit Court announced only in January 2013 and for which the deadline to comply has not yet come, would be to give retroactive effect to

[2] Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA.

such requirements and provide the State a unique and earlier deadline for compliance solely on the basis of submitting its redesignation request for the Baltimore Area. The D.C. Circuit Court recognized the inequity of this type of retroactive impact in *Sierra Club* v. *Whitman,* 285 F.3d 63 (D.C. Cir. 2002),[3] where it upheld the D.C. Circuit Court's ruling refusing to make retroactive EPA's determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the D.C. Circuit Court to make EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The D.C. Circuit Court rejected this view, stating that applying it ''would likely impose large costs on States, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time.'' *Id.* at 68. Similarly, it would be unreasonable to penalize the States by rejecting their redesignation request for an area that is already attaining the 1997 annual $PM_{2.5}$ standard and that met all applicable requirements known to be in effect at the time of the requests. For EPA now to reject the redesignation request solely because the States did not expressly address subpart 4 requirements which have not yet come due, would inflict the same unfairness condemned by the D.C. Circuit Court in *Sierra Club* v. *Whitman.*

b. Subpart 4 Requirements and Maryland Redesignation Request

Even if EPA were to take the view that the D.C. Circuit Court's January 4, 2013 decision requires that, in the context of pending redesignations for the 1997 annual $PM_{2.5}$ standard, subpart 4 requirements were due and in effect at the time Maryland submitted its redesignation request, EPA proposes to determine that the Baltimore Area still qualifies for redesignation to attainment for the 1997 annual $PM_{2.5}$ standard. As explained subsequently, EPA believes that the redesignation request for the Baltimore Area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of redesignating the Area to attainment.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Baltimore Area, EPA notes that subpart 4 incorporates components of subpart 1, which contains general air quality planning requirements for areas designated as nonattainment. *See* section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for coarse particulate matter (PM_{10})[4] nonattainment areas, and under the D.C. Circuit Court's January 4, 2013 decision in *NRDC* v. *EPA,* these same statutory requirements also apply for $PM_{2.5}$ nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See* the General Preamble. In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent ''subsumed by, or integrally related to, the more specific PM_{10} requirements'' (57 FR 13538, April 16, 1992). The subpart 1 requirements include, among other things, provisions for attainment demonstrations, RACM, RFP, emissions inventories, and contingency measures.

For the purposes of this redesignation request, in order to identify any additional requirements which would apply under subpart 4, consistent with EPA's June 2, 2014 $PM_{2.5}$ Subpart 4 Nonattainment Classification and Deadline Rule, EPA is considering the Baltimore Area to be a ''moderate'' $PM_{2.5}$ nonattainment area. As EPA explained in its June 2, 2014 rule, section 188 of the CAA provides that all areas designated nonattainment areas under subpart 4 are initially classified by operation of law as ''moderate'' nonattainment areas, and will remain moderate nonattainment areas unless and until EPA reclassifies the area as a ''serious'' nonattainment area. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM_{10}, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.[5] In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment NSR program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a prevention of significant deterioration (PSD) program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' *See also* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,[6] when EPA evaluates a redesignation request under either subpart 1 or 4, any area that is attaining the $PM_{2.5}$ standards is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that: ''The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.''

The General Preamble also explained that: ''The section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable

[3] *Sierra Club* v. *Whitman* was discussed and distinguished in a recent D.C. Circuit Court decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass'n* v. *EPA.* 630 F.3d 145, 163 (D.C. Cir. 2010), rehearing denied 643 F.3d 958 (D.C. Cir. 2011), cert denied 132 S. Ct. 571 (2011).

[4] PM_{10} refers to particulates nominally 10 micrometers in diameter or smaller.

[5] The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation request is discussed in this rulemaking action.

[6] i.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.'' *Id.* EPA similarly stated in its 1992 Calcagni Memorandum that: ''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.''

It is evident that even if we were to consider the D.C. Circuit Court's January 4, 2013 decision in *NRDC* v. *EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively [7] or prior to December 31, 2014 and, thus, were due prior to the State's redesignation request, those requirements do not apply to an area that is attaining the 1997 annual $PM_{2.5}$ NAAQS, for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA's authority to interpret ''applicable requirements'' in the redesignation context. *See Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the 1997 annual $PM_{2.5}$ standard. EPA's prior ''Clean Data Policy'' rulemakings for the PM_{10} NAAQS, also governed by the requirements of subpart 4, explain EPA's reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. *See* ''Determination of Attainment for Coso Junction Nonattainment Area,'' (75 FR 27944, May 19, 2010). *See also* Coso Junction Proposed PM_{10} Redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006 and 71 FR 63641, 63643–47, October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

Elsewhere in this notice, EPA proposes to determine that the Baltimore Area has attained and continues to attain the 1997 annual $PM_{2.5}$ NAAQS. Under its longstanding interpretation, EPA is proposing to determine here that the Baltimore Area meets the attainment-related plan requirements of subparts 1 and 4 for the 1997 annual $PM_{2.5}$ NAAQS. Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c)(1) and section 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating this redesignation request.

c. Subpart 4 and Control of $PM_{2.5}$ Precursors

The D.C. Circuit Court in *NRDC* v. *EPA* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. EPA in this section addresses the D.C. Circuit Court's opinion with respect to $PM_{2.5}$ precursors. While past implementation of subpart 4 for PM_{10} has allowed for control of PM_{10} precursors such as NO_X from major stationary, mobile, and area sources in order to attain the standard as expeditiously as practicable, section 189(e) of the CAA specifically provides that control requirements for major stationary sources of direct PM_{10} shall also apply to PM_{10} precursors from those sources, except where EPA determines that major stationary sources of such precursors ''do not contribute significantly to PM_{10} levels which exceed the standard in the area.'' EPA's 1997 $PM_{2.5}$ Implementation Rule, remanded by the D.C. Circuit Court, contained rebuttable presumptions concerning certain $PM_{2.5}$ precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was ''not required to address VOC [and ammonia] as . . . $PM_{2.5}$ attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the State for control measures.'' EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing $PM_{2.5}$ concentrations. EPA also left open the possibility for such regulation of VOC and ammonia in specific areas where that was necessary.

The D.C. Circuit Court in its January 4, 2013 decision made reference to both section 189(e) and 40 CFR 51. 1002, and stated that: ''In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not $PM_{2.5}$ precursors, as subpart 4 expressly governs precursor presumptions.'' *NRDC* v. *EPA,* at 27, n.10. Elsewhere in the D.C. Circuit Court's opinion, however, the D.C. Circuit Court observed: ''Ammonia is a precursor to fine particulate matter, making it a precursor to both $PM_{2.5}$ and PM_{10}. For a PM_{10} nonattainment area governed by subpart 4, a precursor is presumptively regulated. *See* 42 U.S.C. 7513a(e) [section 189(e)].'' *Id.* at 21, n.7.

For a number of reasons, EPA believes that its proposed redesignation of the Baltimore Area for the 1997 annual $PM_{2.5}$ NAAQS is consistent with the D.C. Circuit Court's decision on this aspect of subpart 4. While the D.C. Circuit Court, citing section 189(e), stated that ''for a PM_{10} area governed by subpart 4, a precursor is 'presumptively regulated,' '' the D.C. Circuit Court expressly declined to decide the specific challenge to EPA's 1997 $PM_{2.5}$ Implementation Rule provisions regarding ammonia and VOC as precursors. The D.C. Circuit Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular $PM_{2.5}$ nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the State submitted the redesignation request, and disregards the 1997 $PM_{2.5}$ Implementation Rule's rebuttable presumptions regarding ammonia and VOC as $PM_{2.5}$ precursors, the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of the Baltimore Area, EPA believes that doing so is consistent with proposing redesignation of the Area for the 1997 annual $PM_{2.5}$ standard. The Baltimore Area has attained the 1997 annual $PM_{2.5}$ standard without any specific additional controls of VOC and

[7] As EPA has explained previously, we do not believe that the D.C. Circuit Court's January 4, 2013 decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club* v. *Whitman, supra.*

ammonia emissions from any sources in the Area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of PM_{10} precursors.[8] Under subpart 1 and EPA's prior implementation rule, all major stationary sources of $PM_{2.5}$ precursors were subject to regulation, with the exception of ammonia and VOC. Thus, EPA must address here whether additional controls of ammonia and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the Baltimore Area for the 1997 annual $PM_{2.5}$ NAAQS. As explained subsequently, EPA does not believe that any additional controls of ammonia and VOC are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). *See* 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOC under other CAA requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e). *See* 57 FR 13542. EPA in this rulemaking action proposes to determine that Maryland's SIP has met the provisions of section 189(e) with respect to ammonia and VOC as precursors. This proposed determination is based on our findings that: (1) The Baltimore Area contains no major stationary sources of ammonia; and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.[9] In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the Baltimore Area, which is attaining the 1997 annual $PM_{2.5}$ standard, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 annual $PM_{2.5}$ standard in the Area. *See* 57 FR 13539–42.

EPA notes that its 1997 $PM_{2.5}$ Implementation Rule provisions in 40 CFR 51.1002 were not directed at evaluation of $PM_{2.5}$ precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment for the 1997 annual $PM_{2.5}$ NAAQS. By contrast, redesignation to attainment primarily requires the nonattainment area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the D.C. Circuit Court's January 4, 2013 decision as calling for ''presumptive regulation'' of ammonia and VOC for $PM_{2.5}$ under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring the State to address precursors differently than it has already, would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM_{10} contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, i.e., states may determine that only certain precursors need be regulated for attainment and control purposes.[10] Courts have upheld this approach to the requirements of subpart 4 for PM_{10}.[11] EPA believes that application of this approach to $PM_{2.5}$ precursors under subpart 4 is reasonable. Because the Baltimore Area has already attained the 1997 annual $PM_{2.5}$ NAAQS with its current approach to regulation of $PM_{2.5}$ precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the D.C. Circuit Court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of the State's request for redesignation of the Baltimore Area for the 1997 annual $PM_{2.5}$ NAAQS. In the context of a redesignation, the State has shown that the Baltimore Area has attained the standard. Moreover, the State has shown and EPA is proposing to determine that attainment of the 1997 annual $PM_{2.5}$ NAAQS in the Baltimore Area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment of the standard (*see* section V.A.3 of this rulemaking notice). It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013 decision of the D.C. Circuit Court as precluding redesignation of the Baltimore Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS at this time. In summary, even if, prior to the date of the redesignation request submittal, the State was required to address precursors for the Baltimore Area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded 1997 $PM_{2.5}$ Implementation Rule, EPA would still conclude that the Baltimore Area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3(E)(ii) and (v).

V. EPA's Analysis of Maryland's SIP Submittal

EPA is proposing several rulemaking actions for the Baltimore Area: (1) To redesignate the Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS; (2) to approve into the Maryland SIP the associated maintenance plan for the 1997 annual $PM_{2.5}$ NAAQS; and, (3) to approve the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs for the Baltimore Area for transportation conformity purposes. EPA's proposed approval of the redesignation request and maintenance plan for the 1997 annual $PM_{2.5}$ NAAQS is based upon EPA's determination that the Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS, and that all other redesignation criteria have been met for the Baltimore Area. The following is a description of how the December 12, 2013 Maryland submittal satisfies the requirements of section 107(d)(3)(E) of the CAA for the 1997 annual $PM_{2.5}$ NAAQS.

A. Redesignation Request

1. Attainment

EPA has previously determined that the Baltimore Area has attained the 1997 annual $PM_{2.5}$ NAAQS. As noted earlier, on May 22, 2012 (77 FR 30208), EPA determined that the Baltimore Area

[8] Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

[9] The Baltimore Area has reduced VOC emissions through the implementation of various control programs including VOC Reasonably Available Control Technology (RACT) regulations and various onroad and nonroad motor vehicle control programs.

[10] *See, e.g.,* ''Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM_{10} Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM_{10} Standards,'' (69 FR 30006, May 26, 2004) (approving a PM_{10} attainment plan that impose controls on direct PM_{10} and NO_X emissions and did not impose controls on SO_2, VOC, or ammonia emissions).

[11] *See, e.g., Assoc. of Irritated Residents* v. *EPA et al.,* 423 F.3d 989 (9th Cir. 2005).

had attained the 1997 annual $PM_{2.5}$ standard, based on 2007–2009 and 2008–2010 quality-assured, quality-controlled, and certified ambient air quality monitoring data. Pursuant to 40 CFR 51.2004(c), this ''clean data'' determination for the Area suspended the requirements for the State to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and other planning SIPs related to the attainment of the 1997 annual $PM_{2.5}$ NAAQS until the Area is redesignated to attainment for the standard or EPA determines that the Area has again violated the standard, at which time such plans are required to be submitted. EPA also determined in the May 22, 2012 rulemaking, that the Baltimore Area had attained the 1997 annual $PM_{2.5}$ NAAQS by its statutory attainment date of April 5, 2010. The basis and effect of the determination of attainment for the 1997 annual $PM_{2.5}$ NAAQS was discussed in the proposed (76 FR 72374, November 23, 2011) and final rulemaking notice (77 FR 30208, May 22, 2012).

Maryland's redesignation request submittal included the historic monitoring data for the annual $PM_{2.5}$ monitoring sites in the Baltimore Area. The historic monitoring data shows that the Baltimore Area has attained and continues to attain the 1997 annual $PM_{2.5}$ NAAQS. MDE assures that all $PM_{2.5}$ monitoring data for the Baltimore Area has been quality-assured, quality-controlled, and certified by the State in accordance with 40 CFR 58.10. Furthermore, EPA has thoroughly reviewed the most recent ambient air quality monitoring data for $PM_{2.5}$ in the Area, as submitted by the State and recorded in EPA's Air Quality System (AQS). The $PM_{2.5}$ quality-assured, quality-controlled, and state-certified 2009–2012 air quality data shows that the Baltimore Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. The Area's $PM_{2.5}$ annual design values for the 2009–2011, and 2010–2012 monitoring periods as well as preliminary data for 2013 are provided in Table 1.

TABLE 1—DESIGN VALUES IN THE BALTIMORE AREA FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS

Monitor ID	Monitor location	Annual design value (in μg/m³)		
		2009–2011	2010–2012	2011–2013
24–003–1003	Glen Burnie, Anne Arundel County	10.9	10.7	10.0
24–005–1007	Padonia, Baltimore County	10.1	9.6	9.0
24–005–3001	Essex, Baltimore County	11.1	11.0	10.3
24–025–1001	Edgewood, Harford County	9.8	10.3	10.3
24–510–0006	Baltimore City	10.0	10.0	9.9
24–510–0007	Baltimore City	10.2	9.9	9.3
24–510–0008	Baltimore City	10.9	10.4	9.9
24–510–0040	Baltimore City	11.3	11.1	10.5

The Baltimore Area's recent monitoring data supports EPA's previous determinations that the Area has attained the 1997 annual $PM_{2.5}$ NAAQS. In addition, as discussed subsequently with respect to the Baltimore Area's maintenance plan, the State has committed to continue monitoring ambient $PM_{2.5}$ concentrations in accordance with 40 CFR part 58. Thus, EPA is proposing to determine that the Baltimore Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS.

2. The State Has Met All Applicable Requirements Under Section 110 and Subpart 1 of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA

In accordance with section 107(d)(3)(E)(v) of the CAA, the SIP revisions for the 1997 annual $PM_{2.5}$ NAAQS for the Baltimore Area must be fully approved under section 110(k) of the CAA and all the requirements applicable to the Baltimore Area under section 110 of the CAA (general SIP requirements) and part D of Title I of the CAA (SIP requirements for nonattainment areas) must be met.

a. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) of the CAA include, but are not limited to the following: (1) Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; (2) provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; (3) implementation of a source permit program; provisions for the implementation of Part C requirements (PSD); (4) provisions for the implementation of Part D requirements for NSR permit programs; (5) provisions for air pollution modeling; and, (6) provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants in accordance with the NO_X SIP Call (63 FR 57356, October 27, 1998), amendments to the NO_X SIP Call (64 FR 26298, May 14, 1999 and 65 FR 11222, March 2, 2000), and CAIR (70 FR 25162, May 12, 2005). However, section 110(a)(2)(D) of the CAA requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that these requirements are applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110(a)(2) elements of the CAA which are not connected with nonattainment plan submissions and not linked with an area's attainment

status are not applicable requirements for purposes of redesignation. The Baltimore Area will still be subject to these requirements after it is redesignated. EPA concludes that section 110(a)(2) of the CAA and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request, and that section 110(a)(2) elements of the CAA not linked to the area's nonattainment status are not applicable for purposes of redesignation. This approach is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida final rulemaking (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio redesignation (65 FR 37890, June 19, 2000) and in the Pittsburgh, Pennsylvania redesignation (66 FR 53099, October 19, 2001).

EPA has reviewed the Maryland SIP and has concluded that it meets the general SIP requirements under section 110(a)(2) of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of Maryland's SIP addressing section 110(a)(2) requirements, including provisions addressing $PM_{2.5}$. *See* 76 FR 72624, November 25, 2011. These requirements are, however, statewide requirements that are not linked to the $PM_{2.5}$ nonattainment status of the Baltimore Area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of Maryland's $PM_{2.5}$ redesignation request.

b. Subpart 1 Requirements

Subpart 1 sets forth the basic nonattainment plan requirements applicable to $PM_{2.5}$ nonattainment areas. Under section 172 of the CAA, states with nonattainment areas must submit plans providing for timely attainment and meet a variety of other requirements. The General Preamble for Implementation of Title I discusses the evaluation of these requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining the standard. *See* 57 FR 13498, April 16, 1992.

As noted previously, EPA has determined that the Baltimore Area has attained the 1997 annual $PM_{2.5}$ NAAQS. Pursuant to 40 CFR 51.2004(c), the requirement for Maryland to submit, for the Baltimore Area, an attainment demonstration and associated RACM, an RFP plan, contingency measures, and other planning SIPs related to the attainment of the 1997 annual $PM_{2.5}$ NAAQS are suspended until the Area is redesignated to attainment for the standard, or EPA determines that the Area again violated the standard, at which time such plans are required to be submitted. Since the Baltimore Area has attained the 1997 annual $PM_{2.5}$ NAAQS and continues to attain the standard, no additional measures are needed to provide for attainment. Therefore, the requirements of sections 172(c)(1), 172(c)(2), 172(c)(6), and 172(c)(9) of the CAA are no longer considered to be applicable for purposes of redesignation of the Baltimore Area for the 1997 annual $PM_{2.5}$ NAAQS.

The requirement under section 172(c)(3) was not suspended by EPA's clean data determination for the 1997 annual $PM_{2.5}$ NAAQS, and is the only remaining requirement under section 172 of the CAA to be considered for purposes of redesignation of the Baltimore Area. Section 172(c)(3) of the CAA requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions.

On December 10, 2012 (77 FR 73313), EPA approved a 2002 emissions inventory for the 1997 annual $PM_{2.5}$ NAAQS for the Baltimore Area. The emissions inventory, submitted by Maryland on June 8, 2008 along with the Baltimore Area attainment plan for the 1997 annual $PM_{2.5}$ NAAQS, was submitted to meet the requirements of section 172(c)(3) of the CAA. The 2002 comprehensive emissions inventory for the 1997 annual $PM_{2.5}$ standard submitted by the State included emissions estimates that cover the general source categories of point sources, area sources, onroad mobile sources, and nonroad mobile sources for the Baltimore Area. The pollutants that comprise the State's 2002 emissions inventory for the Baltimore Area are $PM_{2.5}$, NO_X, SO_2, VOC, and ammonia (NH_3). An evaluation of the 2002 comprehensive emissions inventory for the Baltimore Area is provided in the TSD prepared by EPA for that separate rulemaking action. *See* Docket ID No. EPA–R03–OAR–2010–0143.

Section 172(c)(4) of the CAA requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) of the CAA requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since the PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a nonattainment NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994 entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Maryland's PSD program for the 1997 annual $PM_{2.5}$ NAAQS will become effective in the Baltimore Area upon redesignation to attainment. *See* (77 FR 45949, August 2, 2012) (approving revisions to Maryland's PSD program).

Section 172(c)(7) of the CAA requires the SIP to meet the applicable provisions of section 110(a)(2) of the CAA. As noted previously, EPA believes the Maryland SIP meets the requirements of section 110(a)(2) of the CAA that are applicable for purposes of redesignation.

Section 175A of the CAA requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area ''for at least 10 years after the redesignation.'' In conjunction with its request to redesignate the Baltimore Area to attainment status, Maryland submitted a SIP revision to provide for maintenance of the 1997 annual $PM_{2.5}$ NAAQS in the Baltimore Area through 2025, which is at least 10 years after redesignation. Maryland is requesting that EPA approve this SIP revision as meeting the requirement of section 175A of the CAA. Once approved, the Baltimore Area maintenance plan will ensure that the SIP for Maryland meets the requirements of the CAA regarding maintenance of the 1997 annual $PM_{2.5}$ NAAQS for the Area. EPA's analysis of the maintenance plan is provided in section V.B (Maintenance Plan) of this document.

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 of the United States Code

(U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability which EPA promulgated pursuant to its authority under the CAA. EPA interprets the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) of the CAA because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. *See Wall* v. *EPA,* 265 F.3d 426, (6th Cir. 2001) (upholding this interpretation). *See also* (60 FR 62748, December 7, 1995) (discussing Tampa, Florida).

Thus, for purposes of redesignating the Baltimore Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS, EPA determines that the Area has meet all applicable SIP requirements under part D of Title I of the CAA.

c. Maryland Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved all applicable requirements of the Maryland SIP for the Baltimore Area for purposes of redesignaton to attainment for the 1997 annual $PM_{2.5}$ NAAQS in accordance with section 110(k) of the CAA.

3. Permanent and Enforceable Reductions in Emissions

For redesignating a nonattainment area to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions. Maryland's redesignation request indicates that a variety of federal vehicle control programs have created emission reductions that contributed to attainment in 2007. In making this demonstration, Maryland has calculated the change in emissions for the on-road sector between 2002, one of the years used to designate the Area as nonattainment, and 2007, one of the years the Area monitored attainment, as shown in Table 2.

TABLE 2—COMPARISON OF 2002 NONATTAINMENT YEAR AND 2007 ATTAINMENT YEAR REDUCTIONS FOR ON ROAD EMISSIONS IN THE BALTIMORE AREA (TPY)

	2002	2007	Decrease
SO_2	2,025.51	385.34	1,640.17
NO_X	76,060.01	49,140.12	26,219.89
$PM_{2.5}$	2,344.86	1,789.28	555.52
VOC	28,060.25	19,998.51	8,061.74
NH_3	1,402.09	91.77	1,310. 32
Total	109,892.72	71,405.02	37,787.64

The reduction in emissions and the corresponding improvement in air quality from 2002 to 2007 in the Baltimore Area can be attributed to a number of regulatory control measures that have been implemented in the Baltimore Area and contributing areas in recent years. An evaluation of the State's 2002 comprehensive emissions inventory for the Baltimore Area is provided in the TSD prepared by EPA for the December 7, 2012 rulemaking action approving the base year inventory. *See* Docket ID No. EPA–R03–OAR–2010–0143. An evaluation of the 2007 emissions inventory is provided in EPA's emissions inventory TSD dated July 23, 2014, which is available in the docket for this proposed rulemaking action.

a. Federal Measures Implemented

Reductions in $PM_{2.5}$ precursor emissions have occurred statewide and in upwind states as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. The Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards (Tier 2 Standards) have resulted in lower NO_X and SO_2 emissions from all new passenger vehicles, including sport utility vehicles, minivans, vans, and pick-up trucks. The Federal rules were phased in between 2004 and 2009. EPA has estimated that, after phasing in the new requirements, new vehicles emit less NO_X in the following percentages: Passenger cars (light duty vehicles)—77 percent; light duty trucks, minivans, and sports utility vehicles—86 percent; and larger sports utility vehicles, vans, and heavier trucks—69–95 percent. EPA expects fleet wide average emissions to decline by similar percentages as new vehicles replace older vehicles. The Tier 2 standards also reduced the sulfur content of gasoline to 30 parts per million (ppm) beginning in January 2006, which reflects up to a 90 percent reduction in sulfur content.

EPA issued the Heavy-Duty Diesel Engine Rule in July 2000. This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which reduced $PM_{2.5}$ emissions from heavy-duty highway engines and further reduced the highway diesel fuel sulfur content to 15 ppm. The total program is estimated to achieve a 90 percent reduction in direct $PM_{2.5}$ emissions and a 95 percent reduction in NO_X emissions for these new engines using low sulfur diesel, compared to existing engines using higher sulfur diesel fuel. The reduction in fuel sulfur content also yielded an immediate reduction in particulate sulfate emissions from all diesel vehicles.

On June 29, 2004 (69 FR 38958), EPA promulgated the Nonroad Diesel Rule for large nonroad diesel engines, such as those used in construction, agriculture, and mining, to be phased in between 2008 and 2014. The rule phased in requirements for reducing the sulfur content of diesel used in nonroad diesel engines. The reduction in sulfur content prevents damage to the more advanced emission control systems needed to meet the engine standards. It will also reduce fine particulate emissions from diesel engines. The rule also reduces the sulfur content in nonroad diesel fuel by over 99%. Prior to 2006, nonroad diesel fuel averaged approximately 3,400 ppm sulfur. Starting in 2007, this rule limited nonroad diesel sulfur content to 500 ppm, with a further reduction to 15 ppm in 2010. The combined engine standards and the sulfur in fuel reductions will reduce NO_X and PM emissions from large nonroad engines by over 90%,

compared to current nonroad engines using higher sulfur content diesel.

In November 2002, EPA promulgated emission standards for groups of previously unregulated nonroad engines. These engines include large spark-ignition engines such as those used in forklifts, airport ground service equipment, and farm and construction equipment; recreational vehicles using spark-ignition engines such as off highway motorcycles, all-terrain vehicles and snowmobiles; and recreational marine diesel engines. Emission standards from large spark-ignition engines were implemented in two tiers, with Tier 1 starting in 2004 and Tier 2 in 2007. Recreational vehicle emission standards were phased in from 2006 through 2012. Marine diesel engine standards were phased in from 2006 through 2009. With full implementation of the entire nonroad spark-ignition engine and recreational engine standards, an 80% reduction in NO_X is expected by 2020.

B. Maintenance Plan

On December 12, 2013, MDE submitted a maintenance plan for the Baltimore Area for the 1997 annual $PM_{2.5}$ NAAQS pursuant to section 175A of the CAA. EPA's analysis for proposing approval of the maintenance plan is provided in this section.

1. Attainment Emissions Inventory

Section 172(c)(3) requires states to submit a comprehensive, accurate, current inventory of actual emissions from all sources in the nonattainment area. For a maintenance plan, states are required to submit an inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS, referred to as the attainment inventory (or the maintenance plan base year inventory), and which should be based on actual emissions. MDE submitted an attainment inventory for 2007, one of the years in the period during which the Baltimore Area monitored attainment of the 1997 annual $PM_{2.5}$ standard. The attainment inventory is comprised of NO_X, $PM_{2.5}$, SO_2, VOC, and NH_3 emissions from point sources, nonpoint sources, onroad mobile sources, and nonroad mobile sources.

For the 2007 emissions inventory for point, nonpoint, and nonroad source categories, MDE submitted the 2007 Version 3 emissions inventory developed through the Mid-Atlantic Regional Air Management Association (MARAMA) regional planning process. Details related to the development of the 2007 emissions inventory can be found in the January 23, 2012 MARAMA TSD entitled ''Technical Support Document for the Development of the 2007 Emissions Inventory for the Regional Air Quality Modeling in the Northeast/Mid-Atlantic Region Version 3.3'', which may be found in Appendix D of the State's submittal, and is available in the docket for this proposed rulemaking action.

The 2007 point source inventory includes emissions from EGUs and non-EGU sources as developed by MARAMA in consultation with MDE. The nonpoint source emissions inventory for 2007 was developed using 2007 specific activity data along with EPA emission factors and the most recently available emission calculation methodologies. The 2007 nonroad mobile source emissions was generated using EPA's National Mobile Inventory Model (NMIM) 2008, which used the NONROAD 2008a emissions model. Since marine, air and rail/locomotive (MAR) emissions are not part of the NONROAD model, they were calculated separately outside of the NONROAD model using the most recent methodologies and inputs.

The 2007 onroad mobile source inventory was developed by using EPA's highway mobile source emissions model MOVES2010a. A mix of default and local data was used to develop the inventory. The 2007 onroad emissions inventory, including a summary of the methodology and data assumptions used for the analysis may be found in Appendix F of the State's submittal, which is available in the docket for this proposed rulemaking action.

EPA has reviewed the documentation provided by MDE and found the emissions inventory to be approvable. For more information on the 2007 inventory submitted by MDE and EPA's analysis of the inventory, see Appendix A of the State's submittal and EPA's emissions inventory TSD dated July 23, 2014, both of which are available in the docket for this proposed rulemaking action.

2. Maintenance Demonstration

Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area ''for at least 10 years after the redesignation.'' EPA has interpreted this as a showing of maintenance ''for a period of ten years following redesignation.'' Where the emissions inventory method of showing maintenance is used, its purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. *See* 1992 Calcagni Memorandum, pages 9–10.

For a demonstration of maintenance, emissions inventories are required to be projected to future dates to assess the influence of future growth and controls; however, the maintenance demonstration need not be based on modeling. *See Wall* v. *EPA, supra; Sierra Club* v. *EPA, supra. See also* 66 FR 53099–53100; 68 FR 25430–32. The measures described in subsection A.3 of section V (Permanent and Enforceable Reductions in Emissions) of this proposed rulemaking action achieved the reduction in emissions from point, area, and mobile sources in the Area that led to attainment in 2007, and will continue through 2025. In addition, some of the nonroad and on-road measures that helped the Area attain the standard in 2007 have requirements which became applicable after 2007, and will help maintain the standard during the 10 year maintenance period. In addition to the measures described in subsection A.3 of section V, Maryland's Healthy Air Act (HAA) regulation will help to ensure the continuing decline of SO_2 and NO_X emissions in the Area during the maintenance period and beyond. Maryland's HAA regulation requires emission reductions of NO_X and SO_2 from large coal-fired power plants in Maryland, and will limit emissions from the Brandon Shores, Herbert A. Wagner, and C.P. Crane Generating Stations, all of which are located in the Baltimore Area. *See* 73 FR 51599, September 4, 2008 (approving Maryland's HAA regulation into the Maryland SIP). The HAA was phased in starting in 2009 with a second phase that started in 2012. At full implementation, the HAA will reduce NO_X and SO_2 emissions from affected units by 65 percent and 80 percent, respectively, from 2002 levels.

To show that the Baltimore Area will remain in attainment, MDE uses projection inventories derived by applying appropriate growth and control factors to the 2007 attainment year emissions inventory. MDE developed projection inventories for an interim year of 2017 and a maintenance plan end year of 2025 to show that future emissions of SO_2, NO_X, $PM_{2.5}$, VOC, and NH_3, will remain at or below the 2007 emissions levels throughout the Baltimore Area through the year 2025.

For EGU emissions, the Department of Energy 2011 Annual Energy Outlook growth factors, delineated by region and fuel, were used to develop the projected EGU emissions. Non-EGU emissions were developed using employment projections and other state specific

emission data. Nonpoint emissions for 2017 and 2025 were developed by applying the appropriate growth and control factors to the 2007 inventory. Nonroad source emissions for 2017 and 2025 were developed using growth factors from EPA's NMIM2008 model. On-road emissions for 2017 and 2025 were developed using EPA's MOVES2010a mobile source inventory model.

EPA has determined that the emissions inventories discussed above as provided by MDE are approvable. For detailed information on the projected inventories, *see* Appendices B and C of the State submittal, and for more information on EPA's analysis of the emissions inventory, *see* EPA's emissions inventory TSD dated July 23, 2014, all of which are available in the docket for this proposed rulemaking action. Table 3 shows the inventories for the 2007 attainment year, the 2017 interim year, and the 2025 maintenance plan end year for the Baltimore Area.

TABLE 3—COMPARISION OF 2007 ATTAINMENT YEAR INVENTORY WITH 2017 AND 2025 PROJECTED EMISSIONS IN THE BALTIMORE AREA (TPY)

	2007	2017	2025	Change from 2007–2017	Change from 2007–2025
SO_2	103,510	24,714	24,620	78,796	78,890
NO_X	116,595	69,258	58,249	47,337	58,346
$PM_{2.5}$	19,005	16,374	16,205	2,631	2,800
VOC	64,416	46,800	44,302	17,616	20,114
NH_3	4,117	3,905	3,930	212	187
Total	307,643	161,051	147,305	146,592	160,337

Table 3 shows that between 2007 and 2017, the Baltimore Area is projected to reduce SO_2 emissions by 76.1 percent, NO_X emissions by 40.6 percent, $PM_{2.5}$ emissions by 13.8 percent, NH_3 by 5.1 percent, and VOC by 27.3 percent. Between 2007 and 2025, the Baltimore Area is projected to reduce SO_2 emissions by 76.2 percent, NO_X emissions by 50.0 percent, $PM_{2.5}$ emissions by 14.7 percent, NH_3 by 4.5 percent and VOC by 31.2 percent. The projected emissions inventories show that the Baltimore Area will continue to maintain the 1997 annual $PM_{2.5}$ NAAQS during the 10 year maintenance period.

3. Monitoring Network

There are eight $PM_{2.5}$ monitors in the Baltimore Area. EPA has determined that Maryland's maintenance plan includes a commitment to continue to operate its EPA-approved monitoring network, as necessary to demonstrate ongoing compliance with the NAAQS. The Baltimore Area maintenance plan includes the State's commitment to continue to operate and maintain its $PM_{2.5}$ air quality monitoring network, consistent with EPA's monitoring requirements, as necessary to demonstrate ongoing compliance with the 1997 annual $PM_{2.5}$ NAAQS. In its December 12, 2013 submittal, Maryland states that it will consult with EPA prior to making any necessary changes to the network and will continue to quality assure the monitoring data in accordance with the requirements of 40 CFR part 58.

4. Verification of Continued Attainment

To provide for tracking of the emission levels in the Baltimore Area, MDE will periodically update the emissions inventory, consisting of annual and periodic evaluations. Annual emissions updates of stationary sources, the Highway Performance Monitoring System vehicle miles travelled data reported to the Federal Highway Administration, and other growth indicators, which will be compared to the growth assumptions to determine if the projected growth and observed growth are consistent. MDE will also submit comprehensive tracking inventories to EPA every three years as required by EPA's Air Emissions Reporting Requirements (AERR) or as required by other federal regulations during the maintenance plan period.

5. Contingency Measures

The contingency plan provisions for maintenance plans are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that a state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

Maryland's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur. These procedures would be triggered in one of three situations: (1) When the annual actual emissions of SO_2, NO_X, or $PM_{2.5}$ exceed the attainment year inventories that are identified in Table 3, (2) when there is an annual exceedance (annual average for one year at a federal reference method monitor located in the Baltimore Area) of 15.0 $\mu g/m^3$; or, (3) When there is any violation (three year average of the annual average at a federal reference method monitor located in the Baltimore Area) of 15.0 $\mu g/m^3$ or greater.

If any future year emissions inventory indicates that the Baltimore Area's total emissions of SO_2, NO_X, or $PM_{2.5}$ exceeds the attainment year levels, MDE would first perform an audit to determine if inventory refinements are needed, including a review of whether appropriate models, control strategies, monitoring strategies, planning assumptions, industrial throughput, and production data were used in the attainment year and future year projections. If the audit does not reconcile the emissions exceedances, MDE will implement one or more of the contingency measures identified in the plan. If an annual exceedance of 15.0 $\mu g/m^3$ occurs, MDE commits to implementing one of the contingency measures identified for additional emission reductions, and if a violation occurs, MDE commits to implementing two or more of the contingency measures to correct the violation.

As explained in greater detail in the Baltimore Area maintenance plan, the candidate contingency measures include the following: (1) $PM_{2.5}$ RACM determinations; (2) NO_X RACM determination; (3) Non Road diesel emission reduction strategies; (4) low

sulfur home heating oil requirements; (5) alternative fuel and diesel retrofit programs for fleet vehicle operations; and, (6) wet suppression upgrade requirements for concrete manufacturing. EPA finds that the Baltimore Area maintenance plan includes appropriate contingency measures as necessary to ensure MDE will promptly correct any violation of the NAAQS that occurs after redesignation. Finally, the maintenance plan establishes a schedule for implementation of contingency measures if needed, and MDE has committed to full implementation of contingency measures or programs within 24 months after notification by EPA that contingency measures must be implemented or 27 months after quality assured data indicates an exceedance or violation has occurred. For all of the reasons discussed above, EPA is proposing to approve the 1997 annual $PM_{2.5}$ maintenance plan for the Baltimore Area as meeting the requirements of section 175A of the CAA.

C. Transportation Conformity

Section 176(c) of the CAA requires Federal actions in nonattainment and maintenance areas to ''conform to'' the goals of SIPs. This means that such actions will not cause or contribute to violations of a NAAQS, worsen the severity of an existing violation, or delay timely attainment of any NAAQS or any interim milestone. Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the transportation conformity rule (40 CFR Part 93, subpart A). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state air quality and transportation agencies, EPA, and the FHWA and FTA to demonstrate that their long range transportation plans and transportation improvement programs (TIP) conform to applicable SIPs. This is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the MVEBs contained in the SIP.

On December 12, 2013, Maryland submitted a SIP revision that contains the 2017 and 2025 $PM_{2.5}$ and NO_X onroad mobile source budgets for the Baltimore Area. Maryland did not provide emission budgets for SO_2, VOC, and NH_3 because it concluded, consistent with the presumptions regarding these precursors in the Transportation Conformity Rule at 40 CFR 93.102(b)(2)(v), which predated and was not disturbed by the litigation on the 1997 $PM_{2.5}$ Implementation Rule, that emissions of these precursors from motor vehicles are not significant contributors to the Area's $PM_{2.5}$ air quality problem. EPA issued conformity regulations to implement the 1997 annual $PM_{2.5}$ NAAQS in July 2004 and May 2005 (69 FR 40004, July 1, 2004 and 70 FR 24280, May 6, 2005). Those actions were not part of the final rule remanded to EPA by the D.C. Circuit Court in NRDC v. EPA, No. 08–1250 (January 4, 2013), in which the D.C. Circuit Court remanded to EPA the 1997 $PM_{2.5}$ Implementation Rule because it concluded that EPA must implement that NAAQS pursuant to the PM-specific implementation provisions of subpart 4, rather than solely under the general provisions of subpart 1. That decision does not affect EPA's proposed approval of the MVEBs for the Baltimore Area. The MVEBs are presented in Table 4.

TABLE 4—MVEBS FOR BALTIMORE AREA, MARYLAND FOR THE 1997 $PM_{2.5}$ NAAQS IN TPY

Year	$PM_{2.5}$	NO_X
2017	1,218.60	29,892.01
2025	1,051.39	21,594.96

EPA's substantive criteria for determining adequacy of MVEBs are set out in 40 CFR 93.118(e)(4). Additionally, to approve the MVEBs, EPA must complete a thorough review of the SIP, in this case the $PM_{2.5}$ maintenance plan, and conclude that with the projected level of motor vehicle and all other emissions, the SIP will achieve its overall purpose, in this case providing for maintenance of the 1997 annual $PM_{2.5}$ NAAQS. EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) EPA taking action on the MVEB.

On April 30, 2014, EPA initiated an adequacy review of the MVEBs for the 1997 annual $PM_{2.5}$ NAAQS that Maryland included in its redesignation request submittal. As such, a notice of the submission of these MVEBs were posted on the adequacy Web site (*http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*). The public comment period closed on May 30, 2014. There were no public comments received. EPA is acting on making the adequacy finding final through a separate notice of adequacy. EPA has reviewed the MVEBs and found them consistent with the maintenance plan and found that the budgets meet the criteria for adequacy and approval. Therefore, EPA is proposing to approve the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs for the Baltimore Area for transportation conformity purposes. Additional information pertaining to the review of the MVEBs can be found in the transportation conformity TSD dated May 20, 2014, available in the docket for this proposed rulemaking action.

VI. Proposed Actions

EPA is proposing to approve the request submitted by Maryland to redesignate the Baltimore Area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. EPA has evaluated the State's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA for the 1997 annual $PM_{2.5}$ standard. The monitoring data demonstrates that the Baltimore Area has attained the 1997 annual $PM_{2.5}$ NAAQS, and, for the reasons discussed previously, that it will continue to attain the 1997 annual $PM_{2.5}$ NAAQS. EPA is also proposing to approve the maintenance plan for the Baltimore Area as a revision to the Maryland SIP for the 1997 annual $PM_{2.5}$ standard because the plan meets the requirements of CAA section 175A for the standard, as described previously in this proposed rulemaking notice. In addition, EPA is proposing to approve the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs for the Baltimore Area for transportation conformity purposes. Final approval of the redesignation request would change the official designation of the Baltimore Area from nonattainment to attainment as found at 40 CFR part 81, for the 1997 annual $PM_{2.5}$ NAAQS, and would incorporate into the Maryland SIP the maintenance plan ensuring continued attainment of the 1997 annual $PM_{2.5}$ NAAQS in the Area for 10 years after redesignation. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does

not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

In addition, this rule proposing to approve Maryland's redesignation request, associated maintenance plan, and MVEBs for transportation conformity purposes for the Baltimore Area for the 1997 annual $PM_{2.5}$ NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: September 15, 2014.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2014–23638 Filed 10–2–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Parts 1001 and 1003

RIN 0936–AA06

Medicare and State Health Care Programs: Fraud and Abuse; Revisions to Safe Harbors Under the Anti-Kickback Statute, and Civil Monetary Penalty Rules Regarding Beneficiary Inducements and Gainsharing

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the safe harbors to the anti-kickback statute and the civil monetary penalty (CMP) rules under the authority of the Office of Inspector General (OIG). The proposed rule would add new safe harbors, some of which codify statutory changes set forth in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) and the Patient Protection and Affordable Care Act, Public Law 111–148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111–152, 124 Stat. 1029 (2010) (ACA), and all of which would protect certain payment practices and business arrangements from criminal prosecution or civil sanctions under the anti-kickback statute. We also propose to codify revisions to the definition of ''remuneration,'' added by the Balanced Budget Act (BBA) of 1997 and ACA, and add a gainsharing CMP provision in our regulations.

DATES: To ensure consideration, comments must be delivered to the address provided below by no later than 5 p.m. Eastern Standard Time on December 2, 2014.

ADDRESSES: In commenting, please reference file code OIG–403–P3. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. However, you may submit comments using one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* (Attachments should be in Microsoft Word, if possible.)

2. *By regular, express, or overnight mail.* You may mail your printed or written submissions to the following address:

Patrice Drew, Office of Inspector General, Department of Health and Human Services, Attention: OIG–403–P, Room 5269, Cohen Building, 330 Independence Avenue SW., Room 5269, Washington, DC 20201.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* You may deliver, by hand or courier, before the close of the comment period, your printed or written comments to:

Patrice Drew, Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue SW., Room 5269, Washington, DC 20201.

Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff at (202) 619–1368.

Inspection of Public Comments: All comments received before the end of the comment period will be posted on *http://www.regulations.gov* for public viewing. Hard copies will also be available for public inspection at the Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue SW., Washington, DC 20201, Monday through Friday from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (202) 619–1368.

FOR FURTHER INFORMATION CONTACT: Heather Westphal, Office of Counsel to the Inspector General, (202) 619–0335, for questions relating to the proposed rule.

Executive Summary

A. Need For Regulatory Action

MMA and ACA include exceptions to the anti-kickback statute, and BBA of 1997 and ACA include exceptions to the definition of ''remuneration'' under the civil monetary penalties law. OIG proposes to codify those changes here. At the same time, OIG proposes additional changes to make technical corrections to an existing regulation and proposes new safe harbors to the anti-

kickback statute to protect certain services that the industry has expressed an interest in offering and that we believe could be, if properly structured and with appropriate safeguards, low risk to Federal health care programs. Finally, the civil monetary penalties law includes a gainsharing CMP provision that has yet to be codified in regulations. We propose to interpret and codify that provision in this proposed rule.

B. Summary of Major Provisions

1. Anti-Kickback Statute and Safe Harbors

We propose to amend 42 CFR 1001.952 by modifying certain existing safe harbors to the anti-kickback statute and by adding safe harbors that provide new protections or codify certain existing statutory protections. These changes include:

- A technical correction to the existing safe harbor for referral services;
- protection for certain cost-sharing waivers, including:
- Pharmacy waivers of cost-sharing for financially needy Medicare Part D beneficiaries; and
- waivers of cost-sharing for emergency ambulance services furnished by State- or municipality-owned ambulance services;
- protection for certain remuneration between Medicare Advantage organizations and federally qualified health centers;
- protection for discounts by manufacturers on drugs furnished to beneficiaries under the Medicare Coverage Gap Discount Program; and
- protection for free or discounted local transportation services that meet specified criteria.

2. Civil Monetary Penalty Authorities

We propose to amend the definition of ''remuneration'' in the CMP regulations at 42 CFR 1003 by adding certain statutory exceptions for:

- Copayment reductions for certain hospital outpatient department services;
- certain remuneration that poses a low risk of harm and promotes access to care;
- coupons, rebates, or other retailer reward programs that meet specified requirements;
- certain remuneration to financially needy individuals; and
- copayment waivers for the first fill of generic drugs.

We also propose to codify the gainsharing CMP set forth in section 1128A(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7a(b)).

C. Costs and Benefits

There are no significant costs associated with the proposed regulatory revisions that would impose any mandates on State, local, or tribal governments or on the private sector.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking is part of a rulemaking that was identified in the Unified Agenda by the title ''Medicare and State Health Care Programs: Fraud and Abuse; Revisions to the Office of Inspector General's Safe Harbors Under the Anti-Kickback Statute, Exclusion Authorities, and Civil Monetary Penalty Rules.'' OIG has proposed additional rulemaking in the following areas: CMP authorities (42 CFR part 1003); inflation adjustment for CMPs (42 CFR part 1003); and exclusion authorities and the duties and responsibilities of State Medicaid Fraud Control Units (MFCUs) 42 CFR parts 1000, 1001, 1002, and 1006. Each of the proposed rules is a stand-alone, independent rule, and thus, one can comment meaningfully on this proposed rule independent of the proposed rules concerning CMP authorities, inflation adjustment for CMPs, exclusion authorities, or authorities and duties of the MFCUs.

I. Background

A. Anti-Kickback Statute and Safe Harbors

Section 1128B(b) of the Act (42 U.S.C. 1320a–7b(b), the anti-kickback statute) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit, or receive remuneration in order to induce or reward the referral of business reimbursable under Federal health care programs, as defined in section 1128B(f) of the Act. The offense is classified as a felony and is punishable by fines of up to $25,000 and imprisonment for up to 5 years. Violations may also result in the imposition of CMPs under section 1128A(a)(7) of the Act (42 U.S.C. 1320a–7a(a)(7)), program exclusion under section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)), and liability under the False Claims Act (31 U.S.C. 3729–33).

The types of remuneration covered specifically include, without limitation, kickbacks, bribes, and rebates, whether made directly or indirectly, overtly or covertly, in cash or in kind. In addition, prohibited conduct includes not only the payment of remuneration intended to induce or reward referrals of patients, but also the payment of remuneration intended to induce or reward the purchasing, leasing, or ordering of, or arranging for or recommending the purchasing, leasing, or ordering of, any good, facility, service, or item reimbursable by any Federal health care program.

Because of the broad reach of the statute, concern was expressed that some relatively innocuous commercial arrangements were covered by the statute and, therefore, potentially subject to criminal prosecution. In response, Congress enacted section 14 of the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93 (section 1128B(b)(3)(E) of the Act), which specifically requires the development and promulgation of regulations, the so-called safe harbor provisions, that would specify various payment and business practices that would not be treated as criminal offenses under the anti-kickback statute, even though they may potentially be capable of inducing referrals of business under the Federal health care programs.

Section 205 of the Health Insurance Portability and Accountability Act of 1996, Public Law 104–191, established section 1128D of the Act, which includes criteria for modifying and establishing safe harbors. Specifically, section 1128D(a)(2) of the Act provides that, in modifying and establishing safe harbors, the Secretary of Health and Human Services (Secretary) may consider whether a specified payment practice may result in:

- An increase or decrease in access to health care services;
- an increase or decrease in the quality of health care services;
- an increase or decrease in patient freedom of choice among health care providers;
- an increase or decrease in competition among health care providers;
- an increase or decrease in the ability of health care facilities to provide services in medically underserved areas or to medically underserved populations;
- an increase or decrease in the cost to Federal health care programs;
- an increase or decrease in the potential overutilization of health care services;
- the existence or nonexistence of any potential financial benefit to a health care professional or provider, which benefit may vary depending on whether the health care professional or provider decides to order a health care item or service or arrange for a referral of health care items or services to a particular practitioner or provider;
- any other factors the Secretary deems appropriate in the interest of preventing fraud and abuse in Federal health care programs.

Since July 29, 1991, we have published in the **Federal Register** a

series of final regulations establishing safe harbors in various areas.[1] These provisions have been developed ''to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial or innocuous arrangements.'' (56 FR 35952, 35958 (July 29, 1991).) Many of the safe harbors create new exemptions, while other safe harbors interpret exceptions already promulgated by statute.

Health care providers and others may voluntarily seek to comply with safe harbors so that they have the assurance that their business practices will not be subject to enforcement action under the anti-kickback statute, the CMP provision for anti-kickback violations, or the program exclusion authority related to kickbacks. We note, however, that compliance with a safe harbor insulates an individual or entity from liability under the anti-kickback statute and the beneficiary inducements CMP [2] only; individuals and entities remain responsible for complying with all other laws, regulations, and guidance that apply to their businesses. In authorizing the Department of Health and Human Services (Department or HHS) to protect certain arrangements and payment practices under the anti-kickback statute, Congress intended the safe harbor regulations to be updated periodically to reflect changing business practices and technologies in the health care industry.

Section 101 of MMA added a new section 1860D to the Act, establishing the Part D prescription drug benefit in the Medicare program. Section 101(e) of MMA amends section 1128B(b)(3) of the Act to permit pharmacies to waive or reduce cost-sharing imposed under Part D as long as specified conditions are met. In addition, section 237 of MMA added an exception to permit certain remuneration between Medicare Advantage organizations and federally qualified health centers.

ACA also includes a number of provisions that could affect liability under the anti-kickback statute. Section 3301 of ACA establishes the Medicare Coverage Gap Discount Program, codified at new section 1860D–14A of the Act (42 U.S.C. 1395w–114A). Pursuant to this program, prescription drug manufacturers have entered into agreements with the Secretary to provide certain beneficiaries access to discounts on drugs at the point of sale. Section 3301(d) of ACA amends the anti-kickback statute to protect the discounts provided for under the Medicare Coverage Gap Discount Program.

We are proposing to incorporate into our regulations safe harbors for payment and business practices permitted under MMA and ACA, as well as proposing new safe harbors pursuant to our authority under section 14 of the Medicare and Medicaid Patient and Protection Act of 1987 to protect practices that we view as posing a low risk to Federal health care programs as long as specified conditions are met.

B. Civil Monetary Penalty Authorities

1. Overview of OIG Civil Monetary Penalty Authorities

In 1981, Congress enacted the CMP law, section 1128A of the Act, as one of several administrative remedies to combat fraud and abuse in Medicare and Medicaid. The law authorized the Secretary to impose penalties and assessments on persons who defrauded Medicare or Medicaid or engaged in certain other wrongful conduct. The CMP law also authorized the Secretary to exclude persons from Federal health care programs (as defined in section 1128B(f)(1) of the Act) and to direct the appropriate State agency to exclude the person from participating in any State health care programs (as defined in section 1128(h) of the Act). Congress later expanded the CMP law and the scope of exclusion to apply to all Federal health care programs, but the CMP applicable to beneficiary inducements remains limited to Medicare and State health care program beneficiaries. The Secretary delegated the law's CMP authorities to OIG. 53 FR 12993 (April 20, 1988). Since 1981, Congress has created various other CMP authorities covering numerous types of fraud and abuse, many of which were also delegated by the Secretary to OIG.

2. The Definition of ''Remuneration''

The BBA of 1997 and section 6402(d)(2)(B) of ACA amended the definition of ''remuneration'' for purposes of the beneficiary inducements CMP at section 1128A(a)(5) of the Act, as discussed below. We propose to incorporate these changes into the definition of ''remuneration'' under proposed § 1003.110 [3] (current § 1003.101).

3. The Gainsharing CMP

Public Law 99–509, the Omnibus Budget Reconciliation Act (OBRA) of 1986, authorized the Secretary to impose CMPs for certain incentive payments made to physicians by hospitals, risk-sharing health maintenance organizations (HMOs), and competitive medical plans. Over time, this provision, section 1128A(b) of the Act (the Gainsharing CMP), has been amended to repeal the provisions relating to HMOs and other risk-sharing entities and to make various other changes in terminology.[4] *See* section 6003(g)(3) of Public Law 101–239, OBRA of 1989; section 4204(a)(3) and 4731(b) of Public Law 101–508, OBRA of 1990; and section 4201(c) of the BBA of 1997.

Section 1128A(b)(1) prohibits a hospital or a critical access hospital from knowingly making a payment, directly or indirectly, to a physician as an inducement to reduce or limit services provided to Medicare or Medicaid beneficiaries who are under the direct care of the physician. A hospital or a critical access hospital that makes such payment and the physician who knowingly accepts such payment are subject to CMPs of not more than $2,000 for each beneficiary for whom the payment is made.

II. Provisions of the Proposed Rule

A. Anti-Kickback Statute and Safe Harbors

Below is a description of the additional payment practices that we are proposing to incorporate under 42 CFR 1001.952 pursuant to the authorities cited under each heading and the rationale for their inclusion in this proposed rulemaking. Consistent with the criteria set forth in section 1128D(a)(2) for modifying and establishing safe harbors, our goal is to protect beneficial arrangements that enhance the efficient and effective delivery of health care and promote the best interests of patients, while also protecting the Federal health care programs and beneficiaries from undue risk of harm associated with referral payments. We seek to strike an appropriate balance between protections for beneficial arrangements and safeguards to prevent unscrupulous

[1] 56 FR 35952 (July 29, 1991); 61 FR 2122 (Jan. 25, 1996); 64 FR 63518 (Nov. 19, 1999); 64 FR 63504 (Nov. 19, 1999); 66 FR 62979 (Dec. 4, 2001); 71 FR 45110 (Aug. 8, 2006); and 72 FR 56632 (Oct. 4, 2007).

[2] Pursuant to section 1128A(i)(6)(B), any practice permissible under the anti-kickback statute, whether through statutory exception or regulations issued by the Secretary, is also excepted from the beneficiary inducements CMP.

[3] The Secretary proposed a reorganization of Part 1003. See Notice of Proposed Rulemaking RIN 0936–AA04, Medicare and State Health Care Programs: Fraud and Abuse; Revisions to the Office of Inspector General's Civil Monetary Penalty Rules, published on May 12, 2014 (79 FR 27080) (CMP NPRM); this proposed rule uses the section designations proposed in the CMP NPRM, together with current section numbers.

[4] Requirements relating to physician incentive plans in HMOs and other risk-sharing entities are now set forth in section 1876(i) of the Act.

individuals and entities from taking advantage of the safe harbors to increase costs to programs and patients or compromise quality of care. We seek comments on how best to do this with respect to all of our proposals below.

1. Referral Services

We propose to make a technical correction to the safe harbor for referral services, found at 42 CFR 1001.952(f). This safe harbor originally required that any fee a referral service charged a participant be ''based on the cost of operating the referral service, and not on the volume or value of any referrals to or business otherwise generated by the participants for the referral service * * *''. This language created an unintended ambiguity, such that the safe harbor could have been viewed as permitting referral services to adjust their fees on the basis of the volume of referrals they make to the participants. In 1999, we finalized a modification to the language to clarify that the safe harbor precludes protection for payments from participants to referral services that are based on the volume or value of referrals to, or business otherwise generated by, *either party for the other party. See* 64 FR 63518, 63526 (Nov. 19, 1999). During subsequent revisions to the safe harbor by which we intended to make a technical correction clarifying that OIG's exclusion authority applied to all Federal health care programs rather than only to Medicare and State health care programs, the language in § 1001.952(f)(2) inadvertently was changed to ''* * * or business otherwise generated by either party for the referral service * * *.'' *See* 67 FR 11928, 11929 and 11934 (Mar. 18, 2002). Therefore, we propose to make a technical correction and revert to the language in the 1999 final rule cited above.

2. Cost-Sharing Waivers

Generally, the reduction or waiver of Medicare or other Federal health care program cost-sharing amounts may implicate the anti-kickback statute. Our concern about potentially abusive waivers of cost-sharing amounts under the anti-kickback statue is longstanding. For example, we have previously stated that providers and suppliers that routinely waive Medicare cost-sharing amounts for reasons unrelated to individualized, good faith assessments of financial hardship may be held liable under the anti-kickback statute. *See e.g.,* Special Fraud Alert, 59 FR 65372, 65374 (Dec. 19, 1994). Such waivers may constitute prohibited remuneration to induce referrals under the anti-kickback statute, as well as violations of the CMP prohibition against inducements to beneficiaries, found in section 1128A(a)(5) of the Act. We propose to modify § 1001.952(k) by adding two new subparagraphs to protect certain cost-sharing waivers that pose a low risk of harm and make technical corrections to the introductory language to account for new subparagraphs. In addition, we note that subparagraph (k) is limited to reductions or waivers of Medicare and State health care program beneficiary cost-sharing. We are considering and solicit comments about expanding this safe harbor to protect waivers under all Federal health care programs, if applicable, and subject to each of the paragraphs below.

Part D Cost-Sharing Waivers by Pharmacies

As noted in section I.A above, MMA specifically amended section 1128B(b)(3) of the Act by adding a new subparagraph (G) that excepts from liability under the anti-kickback statute waivers or reductions by pharmacies (including pharmacies of the Indian Health Service, Indian tribes, tribal organizations, and urban Indian organizations) of any cost-sharing imposed under Medicare Part D, as long as certain conditions are met. These conditions are specified in clauses (i) through (iii) of section 1128A(i)(6)(A) of the Act, and we propose to interpret them consistent with our regulations interpreting these conditions in paragraph (1) of the definition of ''remuneration'' at § 1003.101.

We propose to add a new § 1001.952(k)(3) reflecting this exception to the anti-kickback statute. Thus, consistent with the statute, a pharmacy waiving Part D cost-sharing qualifies for safe harbor protection if: (1) The waiver or reduction is not advertised or part of a solicitation; (2) the pharmacy does not routinely waive the cost-sharing; and (3) before waiving the cost-sharing, the pharmacy either determines in good faith that the beneficiary has a financial need or the pharmacy fails to collect the cost-sharing amount after making a reasonable effort to do so. If, however, the waiver or reduction of cost-sharing is made on behalf of a subsidy-eligible individual (as defined in section 1860D–14(a)(3) of the Act), then conditions (2) and (3) above are not required. We reiterate, however, that compliance with the conditions of this safe harbor, as with all safe harbors, protects a individual or an entity from liability only under the anti-kickback statute and the beneficiary inducements CMP, pursuant to section 1128A(i)(6)(B) of the Act. Providers, practitioners, and suppliers still must comply with other laws, regulations, and Centers for Medicare & Medicaid Services (CMS) program rules.

Cost-Sharing Waivers for Emergency Ambulance Services

Over the years, we have received many advisory opinion requests concerning the reduction or waiver of coinsurance or deductible amounts owed for emergency ambulance services to an ambulance supplier that is owned and operated by a State or a political subdivision of a State, resulting in many favorable advisory opinions (that is, approving of such arrangements). Notwithstanding the vast body of favorable advisory opinions, we continue to receive similar requests for advisory opinions each year. In light of this, pursuant to our authority under section 1128B(b)(3)(E) of the Act, we propose to establish a safe harbor to protect those reductions or waivers that meet all the conditions enumerated in § 1001.952(k)(4).

First, we propose to require that the ambulance provider or supplier be owned and operated by a State, a political subdivision of a State, or a federally recognized Indian tribe [5] and be the Medicare Part B provider or supplier of the emergency ambulance services. We note that items and services that are paid for directly or indirectly by a government entity (*i.e.,* ''free services'') generally are not reimbursable by Medicare,[6] so we also propose to limit the safe harbor protection to situations in which a provider's or supplier's reduction or waiver of coinsurance or deductible is not considered to be the furnishing of services paid for directly or indirectly by a government entity, subject to applicable exceptions promulgated by CMS. CMS has explained that certain cost-sharing waivers do not constitute the provision of free services:

> A [State or local government] facility which reduces or waives its charges for patients unable to pay, or charges patients only to the extent of their Medicare and other health insurance coverage, is not viewed as furnishing free services and may therefore receive program payment.[7]

Notwithstanding the use of the term ''facility,'' CMS has confirmed that this provision would apply to an ambulance provider or supplier that was owned

[5] Section 104 of the Federally Recognized Indian Tribe List Act of 1994, Public Law 103–454, 108 Stat. 4791, requires the Secretary to publish a list of all federally recognized Indian tribes on an annual basis.

[6] *See* 42 CFR § 411.8.

[7] CMS Medicare Benefit Policy Manual, Pub. No. 100–02, ch. 16, § 50.3.1.

and operated by a State or a political subdivision of a State and that was the Medicare Part B provider or supplier of the emergency ambulance services.

We also would require that the ambulance provider or supplier offer the reduction or waiver on a uniform basis, without regard to patient-specific factors. In addition, we propose to include an express prohibition against claiming the amount reduced or waived as bad debt for payment purposes under Medicare or a State health care program or otherwise shifting the burden of the reduction or waiver onto Medicare, a State health care program, other payers, or individuals. We solicit comments on these proposed conditions.

For purposes of this safe harbor, we plan to interpret the term ''ambulance provider or supplier'' as a provider or supplier of ambulance transport services that furnishes emergency ambulance services. The term would not include a provider or supplier of ambulance transport services that furnishes only nonemergency transport services, because the safe harbor would only apply to the waiver of cost-sharing in connection with emergency ambulance services. We plan to interpret ''emergency ambulance services'' in a manner consistent with the definition given to that term in 42 CFR 1001.952(v)(4)(iv). We solicit comments on this interpretation and on whether these terms need to be expressly defined in the regulatory text of this safe harbor.

Finally, we are considering whether to include reductions or waivers of cost-sharing amounts owed under other Federal health care programs (*e.g.,* Medicaid) in the safe harbor. We solicit comments on this consideration, and on what additional or different safeguards, if any, might be required to protect against fraud, waste, and abuse.

This safe harbor would apply only to situations in which the governmental unit owns and operates the ambulance provider or supplier; it would not apply to contracts with outside ambulance providers or suppliers. For example, if a municipality contracted with an outside ambulance provider or supplier for rendering services to residents of its service area, the municipality could not require the ambulance provider or supplier to waive the collection from beneficiaries of out-of-pocket cost-sharing amounts unless the municipality paid the cost-sharing amounts owed or otherwise made provisions for paying them.

3. Federally Qualified Health Centers and Medicare Advantage Organizations

An individual enrolled in a Medicare Advantage (MA) plan may receive services from a federally qualified health center (FQHC) that has a written agreement with the MA plan. Section 237 of MMA amended 42 U.S.C. 1395w–27(e) by adding a new paragraph (3) regarding agreements between MA organizations and FQHCs. This new paragraph requires that the written agreement between the two entities specifically provide that the MA organization will pay the contracting FQHC no less than the level and amount of payment that the plan would make for the same services if the services were furnished by another type of entity. Section 237 also added a new statutory exception to the anti-kickback statute at section 1128B(b)(3)(H) of the Act (42 U.S.C. 1320a–7b(b)(3)(H)). This exception protects ''any remuneration between a federally qualified health center (or an entity controlled by such a health center) and an MA organization pursuant to a written agreement described in section 1853(a)(4) [of the Act].'' [8] We propose to incorporate this exception into the safe harbor regulations as new section 42 CFR 1001.952(z) and solicit comments on this proposal.

4. Medicare Coverage Gap Discount Program

Section 3301 of ACA establishes the Medicare Coverage Gap Discount Program, codified at section 1860D–14A of the Act. Under this program, prescription drug manufacturers enter into an agreement with the Secretary to provide certain beneficiaries access to discounts on drugs at the point of sale.

Section 3301(d) of ACA amends the anti-kickback statute by adding a new subparagraph (J) to section 1128B(b)(3) of the Act to protect the discounts provided for under the Medicare Coverage Gap Discount Program. To codify this self-implementing exception in our regulations, this proposed rule would add a new paragraph (aa) to the existing safe harbor regulations at 42 CFR 1001.952.

This new paragraph (aa) would protect a discount in the price of an ''applicable drug'' of a manufacturer that is furnished to an ''applicable beneficiary'' under the Medicare Coverage Gap Discount Program under section 1860D–14A, as long as the manufacturer participates in, and is in full compliance with all requirements of, the Medicare Coverage Gap Discount Program. The proposed regulation would incorporate by reference the following definitions of the terms ''applicable beneficiary'' and ''applicable drug'' which were added by a new section 1860D–14A(g) of the Act:

Applicable beneficiary means an individual who, on the date of dispensing a covered part D drug—

(A) is enrolled in a prescription drug plan or [a Medicare Advantage Prescription Drug (MA–PD)] plan;

(B) is not enrolled in a qualified retiree prescription drug plan;

(C) is not entitled to an income-related subsidy under section 1860D–14(a); and

(D) who—

(i) has reached or exceeded the initial coverage limit under section 1860D–2(b)(3) during the year; and

(ii) has not incurred costs for covered part D drugs in the year equal to the annual out-of-pocket threshold specified in section 1860D–2(b)(4)(B).

Applicable drug means, with respect to an applicable beneficiary, a covered part D drug—

(A) approved under a new drug application under section 505(b) of the Federal Food, Drug, and Cosmetic Act or, in the case of a biologic product, licensed under section 351 of the Public Health Service Act (other than a product licensed under subsection (k) of such section 351); and

(B)(i) if the sponsor of the prescription drug plan or the MA organization offering the MA–PD plan uses a formulary, which is on the formulary of the prescription drug plan or MA–PD plan that the applicable beneficiary is enrolled in;

(ii) if the [prescription drug plan (PDP)] sponsor of the prescription drug plan or the MA organization offering the MA–PD plan does not use a formulary, for which benefits are available under the prescription drug plan or MA–PD plan that the applicable beneficiary is enrolled in; or

(iii) is provided through an exception or appeal.

5. Local Transportation

Pursuant to our authority at section 1128B(b)(3)(E) of the Act, we propose to establish a new safe harbor at 42 CFR 1001.952(bb) to protect free or discounted local transportation services provided to Federal health care program beneficiaries. We explored this issue in the context of section 1128A(a)(5) in the past. According to the Act's legislative history, in enacting section 1128A(a)(5) of the Act, Congress intended that the statute not preclude the provision of complimentary local transportation of nominal value (H.R. Conf. Rep. No. 104–736 at 255 (1996)). We have interpreted ''nominal value'' to mean no more than $10 per item or service or $50 in the aggregate over the course of a year. (*See* 65 FR 24400, 24411; April 6, 2000.) As we previously indicated, we were concerned that this interpretation may be overly restrictive in the context of complimentary local transportation.

[8] Section 1853(a)(4) of the Act (42 U.S.C. 1395w–23(a)(4)) generally describes the payment rule for FQHCs that provide services to patients enrolled in MA plans that have an agreement with the FQHC, including agreements required under 42 U.S.C. 1395w–27(e)(3).

Accordingly, we solicited public input on a number of issues as they related to a possible exception to section 1128A(a)(5) of the Act (via 1128A(i)(6)) for complimentary local transportation. (67 FR 72892; Dec. 9, 2002) (2002 Solicitation). However, ultimately we did not propose or finalize an exception for complimentary local transportation.

On the basis of our experience in the years since the 2002 Solicitation and our continued concern that our interpretation of ''nominal value'' in the context of complimentary local transportation may be overly restrictive, we are proposing a safe harbor to the anti-kickback statute to protect not only certain free local transportation but also discounted local transportation that meets certain conditions. As explained above, by operation of section 1128A(i)(6)(B), practices permissible under the safe harbor would also be excepted from the definition of ''remuneration'' in section 1128A(i)(6) of the Act.

The proposed safe harbor would protect free or discounted local transportation made available to established patients (and, if needed, a person to assist the patient) to obtain medically necessary items and services. We also seek comments on a second format of transportation that would be akin to a shuttle service. We are mindful that certain types of entities may have legitimate financial and patient care interests in the provision of local transportation to patients and that such transportation could, depending on the circumstances, benefit Federal health care programs through reduced costs and Federal beneficiaries through better care, access, and convenience. In an effort to foster these beneficial arrangements without permitting arrangements that negatively impact beneficiaries or Federal health care programs, the safe harbor would impose a number of conditions on protected free or discounted local transportation services as set forth below.

(1) We propose to require that the free or discounted local transportation services be available only to established patients (as described in greater detail below) and be determined in a manner unrelated to the past or anticipated volume or value of Federal health care program business. This requirement is intended to reduce the risk that a health care provider or supplier could use a transportation program for the purpose of increasing business by transporting patients to its own premises or for the purpose of inappropriately inducing referrals from other providers or suppliers by transporting patients to theirs. We propose and solicit comments on a number of safeguards and limitations related to this proposed condition.

(a) We propose that the safe harbor protect free or discounted local transportation offered or provided by any individual or entity, except as provided below (for purposes of this safe harbor, an ''Eligible Entity''), subject to meeting all proposed safeguards herein. The term ''Eligible Entity'' in the proposed safe harbor would not include individuals and entities (or family members or others acting on their behalf) that primarily supply health care items (including, but not limited to durable medical equipment (DME) suppliers or pharmaceutical companies) because we believe that there may be additional risk that these types of entities, which are heavily dependent upon practitioner prescriptions and referrals, would use transportation arrangements to generate business for themselves by steering transported patients to those who order their products. Moreover, these suppliers and manufacturers do not have the broader patient care responsibilities that, for example, hospitals, health systems, clinics, and physicians have, and thus they would seem to have less need to engage in free or discounted local transportation arrangements. We have similar concerns about the laboratory industry even though laboratories furnish services rather than items. Thus, we propose to exclude laboratories from the definition of ''Eligible Entity'' and solicit comments on that proposal.

For the same and other reasons, we are considering and solicit comments on whether certain other types of providers, suppliers of services, or other entities should be excluded, completely or partially, from protection as an Eligible Entity. In the context of partially limiting protection as an Eligible Entity, we are considering and seek comments on whether certain types of health care providers or suppliers of services should not be protected when they provide free or discounted local transportation to other health care providers or suppliers who refer to them. For example, our oversight experience suggests that overutilization may be occurring in the home health industry. We are concerned that protecting the provision of free or discounted local transportation by home health care providers to physician offices that are actual or potential referral sources might result in both steering (inducing the physician to refer to that particular home health care provider) and overutilization in the form of unnecessary physician visits or unnecessary home health care prescriptions. To address this concern, we are considering excluding home health care providers from safe harbor protection when they furnish free or discounted local transportation to their referral sources (but not excluding them from protection when they provide such transportation to non-referral sources, such as pharmacies). We also solicit comments on whether home health agencies should be excluded from the definition of ''Eligible Entity'' entirely.

At this time, we propose that the safe harbor criteria apply equally to all Eligible Entities offering the eligible forms of free or discounted local transportation services. In addition to considering whether to exclude certain types of providers or suppliers of services from protection as described above, we are also considering and solicit comments on whether there should be additional safeguards depending on the type of Eligible Entity offering the transportation services and, if so, what types of safeguards could be included to protect beneficial free or discounted local transportation arrangements while at the same time preventing abuses, such as overutilization, improper patient steering, or use of free or discounted local transportation to generate referrals, either referrals initiated by the transported patient or referrals from providers and others to whom the patients are transported.

(b) We propose and solicit comments on limiting safe harbor protection to free or discounted local transportation offered to established patients. Thus, for example, once a patient has selected an oncology practice and has attended an appointment with a physician in the group, the physician could offer transportation assistance to the patient who might have trouble reliably attending appointments for chemotherapy. However, safe harbor protection would not be available to a practice that offers or provides free or discounted transportation to new patients.

(c) We propose to allow free or discounted local transportation services to the premises of a health care provider or supplier, subject to certain limitations that we believe would reduce the risk of using the transportation services to increase referrals. First, the safe harbor would not protect free or discounted local transportation that an Eligible Entity makes available only to patients who were referred to it by particular health care providers or suppliers. Likewise, the safe harbor would not protect an offer of transportation that is contingent

on a patient's seeing particular providers or suppliers who may be referral sources for the Eligible Entity offering the transportation. These restrictions would not prohibit Eligible Entities from setting limitations on the furnishing of free or discounted local transportation, but they would require that the limitations be unrelated to the volume or value of referrals. For example, a hospital could place a limit of 10 miles or a limit on the number of trips on its offer to transport a patient to another health care provider or supplier for the purpose of obtaining items or services necessary to avoid hospital readmissions. It could not, however, limit the offer of transportation to patients who receive these items or services from the hospital's referral sources. We are considering and seek comments on any additional safeguards that would be required to limit the risk of fraud and abuse associated with one health care provider or supplier providing transportation to the premises of another, as well as on whether one provider or supplier of services should be permitted to provide free or discounted local transportation to the premises of others at all. For example, if the safe harbor is to cover transportation provided by one health care provider to the premises of another, should it be required that the patient be an established patient of the provider or supplier to which the patient would be transported, as well as an established patient of the Eligible Entity offering the transportation? We also recognize that health systems, health plans, accountable care organizations, or other integrated networks of providers and suppliers might be Eligible Entities and might seek to establish a free or discounted local transportation program only among providers and suppliers within the system or network. We seek comments on the impact on those potential programs if we include, as conditions of safe harbor protection, the restrictions on offers of transportation set forth in this section. We are considering whether, and if so, how, the safe harbor conditions should be modified to account for differences that may exist when these kinds of entities provide free or discounted local transportation. We are also considering whether, for these kinds of entities, safe harbor protection should apply only to free or discounted local transportation provided to destinations that are participating or network providers or suppliers; conversely, we are considering whether such entities should be permitted or required to provide free or discounted local transportation to non-network or non-participating providers or suppliers and, if so, under what conditions. Finally, if we were to have different standards applicable to entities that do not directly furnish health care services, we are interested in comments suggesting safeguards to prevent abuses such as overutilization, improper patient steering, and increased costs.

(d) We also propose to require that the offer or granting of free or discounted local transportation services not be based on the type of treatment a patient might receive. Under the proposed safe harbor, an Eligible Entity would be permitted to restrict offers of free or discounted local transportation to patients whose conditions require frequent or critical (*e.g.,* follow-up testing for a drug that has the potential for serious side effects) appointments, but who do not have reliable transportation. In practice, this means that a free or discounted local transportation offer might be restricted to patients with chronic conditions, or even, in some circumstances, to patients with a specific illness. However, limiting offers of transportation to patients who have been prescribed expensive treatments that are lucrative for the Eligible Entity offering the transportation (or a referral source, parent company, subsidiary, or other affiliated entity of the Eligible Entity) would not be protected. For example, an oncology group that offered an expensive radiation treatment in its office could not restrict its offers of transportation to patients who require the lucrative radiation treatments. The group could, however, offer transportation to patients who require frequent appointments to monitor their condition, even if some of those patients also would receive the radiation treatment. We solicit comments on this proposal.

(e) In addition, we are considering and seek comments on whether to require Eligible Entities to maintain documented beneficiary eligibility criteria, such as a requirement that the patient show transportation need or financial need or that the transportation assistance would address risks associated with failure to comply with a treatment regimen. Offering transportation to patients solely on the basis of number of appointments, without regard to transportation need, raises the possibility that the offer might be based upon the volume of Federal health care program business and thus would not be protected.

(f) Finally, we are considering and solicit comments on whether Eligible Entities should be limited for purposes of safe harbor protection to providing transportation for medical purposes or if Eligible Entities should also be protected under the safe harbor if they provide free or discounted local transportation for other purposes that relate to the patient's health care (*e.g.,* to apply for government benefits, to obtain counseling or other social services, or to get to food banks or food stores). We would not protect transportation for purposes wholly unrelated to health care, such as transportation to entertainment or sporting events. We note, however, that the anti-kickback statute prohibits offering or providing remuneration to induce referrals for or receiving items or services paid for by Federal health care programs. The provision of transportation for non-medical purposes, even by a provider or supplier of health care services, would not necessarily violate the statute, depending on the facts and circumstances. For example, a hospital could potentially sponsor shuttle service between a housing complex and a grocery store without running afoul of the statute, if the service were available to all residents of the complex regardless of whether they were or would become patients of the hospital.

We are considering and solicit comments on whether the safe harbor should separately protect transportation supplied by an Eligible Entity, such as a hospital, in the form of bus or van service on regular routes that include neighborhoods served by the hospital, public transportation stops, and the hospital campus or other locations where referring physicians have offices. If we were to protect this type of transportation, protection would not necessarily be limited to established patients of an Eligible Entity. We recognize that certain communities may have a need for this type of service, but we also recognize that such a service presents opportunities for fraud and abuse. Thus, we solicit comments not simply on whether this type of service would be useful but also on what additional safeguards we could include to reduce the risk that Eligible Entities would use this service to bring in patients for unnecessary services, leading to overutilization or compromised quality of care.

(2) We propose to limit the form of transportation by excluding from safe harbor protection air, luxury (*e.g.,* limousine), and ambulance-level transportation.

(3) We propose and solicit comments on the following limitations, which would be designed to exclude from

protection transportation that is, in reality, a means for providers and suppliers to pay for recruitment of patients. First, we propose to exclude from safe harbor protection transportation services that are publicly advertised or marketed to patients or others who are potential referral sources. Second, we propose that the safe harbor would not apply if Eligible Entities were to pay drivers or others involved in arranging the transportation on a per-beneficiary transported basis, rather than, for example, on an hourly or mileage basis. Third, no safe harbor protection would be available if marketing of health care items and services occurred during the course of the transportation. For purposes of this safe harbor condition, we would not consider signage on the vehicle designating the source of the transportation (*e.g.,* the name of the hospital) to be ''marketing.''

(4) We propose to protect only local transportation services provided: (a) To the patient and, if needed, a family member or other person to assist the patient, to obtain medically necessary items or services and (b) within the local area of the health care provider or supplier to which the patient would be transported. We propose permitting the free or discounted local transportation to be extended to a family member, a friend, or other person involved in the patient's care. We recognize that it may be beneficial or necessary in some circumstances for the patient to be accompanied by another person, and we do not view this extension as increasing the risk of fraud and abuse. We do not intend to require that the need for a patient companion be documented, nor do we intend that transportation of a patient companion be required for the proposed safe harbor to apply to transportation of the patient.

Finally, we propose to limit the safe harbor to local transportation. In the interest of providing clear guidance, we propose that if the distance that the patient would be transported is no more than 25 miles, then the transportation would be deemed to be local. We solicit comments on whether 25 miles is an appropriate distance for this deeming provision. We also solicit comments on whether 25 miles should be a fixed limitation rather than a distance ''deemed'' to comply with the safe harbor.[9]

We recognize that a distance-based test is not a one-size-fits-all solution. Therefore, we are considering and seek comments on other reasonable methods for interpreting the term ''local'' either alone or in combination with the 25-mile deeming provision. For example, we are considering and solicit comments on:

- Whether to allow a more expansive service area for patients who reside in rural or underserved areas, and if so, what the appropriate test should be and if ''rural'' or ''underserved'' should be defined;
  - If we were to include definitions, we solicit comments on: (1) Defining ''underserved'' as being located either in a Health Professional Shortage Area or a Medically Underserved Area; and (2) using the definition of ''rural'' accepted by the Office of Rural Health Policy (i.e., all counties outside a Metropolitan Statistical Area (MSA), plus counties within MSAs with Rural-Urban Commuting Codes 4–10). We also solicit comments on alternate definitions for these terms;
  - If we were to deem a greater distance to be ''local'' in rural or underserved areas, we solicit comments on expanding the distance to 35 miles or to the nearest facility capable of providing medically necessary items and services, whichever is greater;
- whether to permit free or discounted local transportation to the nearest facility capable of providing medically necessary items and services, even if the beneficiary resides farther away than the proposed mileage limits would otherwise allow;
- whether travel time might be more appropriate than a distance-based method;
- whether the general approach used in the regulations governing exceptions to the self-referral prohibition related to compensation arrangements regarding ''geographic area served by the hospital,'' which uses a calculation based on the contiguous ZIP Codes from which hospitals draw at least 75 percent of their inpatients (*see* 42 CFR 411.357(e)(2)), would be useful; and
- whether a more general approach, such as transportation offered to patients within the primary service area of the provider or supplier (or other location) to which the patient would be transported, would be appropriate.

We solicit comments on all of these possible approaches, and we will consider alternative suggestions as well.

(5) We propose requiring the Eligible Entity that makes the transportation available to bear the costs of the free or discounted local transportation services and not shift the burden of these costs onto Medicare, a State health care program, other payers, or individuals. Moreover, safe harbor protection would not be available if the Eligible Entity providing the transportation and the destination provider or supplier had any referral agreement tied to the transportation. For example, if an ambulance supplier had an agreement with a hospital to provide certain free transports to hospital outpatients (*e.g.,* via van service) in exchange for receiving the hospital's transports that are payable by Medicare Part B, the free transportation would not be protected.

B. Civil Monetary Penalty Authorities

This proposed rule would amend 42 CFR Part 1003 in two ways. First, we propose to amend the definition of ''remuneration'' related to the beneficiary inducements CMP to: (a) Add a self-implementing exception that was enacted in BBA of 1997 but was never codified in our regulations; and (b) codify amendments that were enacted in ACA. Second, we propose to codify in our regulations the Gainsharing CMP by interpreting terms used in that statute and adding a definition of ''hospital'' to the regulations.

1. Beneficiary Inducements CMP

This proposed rule would add exceptions to the regulations at Part 1003 addressing the civil monetary penalties prohibition against offering inducements to Medicare or Medicaid beneficiaries that the offeror knows or should know are likely to influence the selection of particular providers, practitioners or suppliers.[10] As we explained in footnote 2 above, one exception to the definition of ''remuneration'' for purposes of the beneficiary inducements CMP incorporates exceptions to the anti-kickback statute and the safe harbor regulations. However, no parallel exception exists in the anti-kickback statute. Thus, the exceptions in section 1128A(i)(6) of the Act apply only to the definition of ''remuneration'' applicable to section 1128A.

Section 4523 of the BBA of 1997 added section 1833(t)(5)(B) of the Act, which required the Secretary to establish a procedure to permit hospitals to elect to reduce copayment amounts for some or all covered hospital outpatient department (OPD) services (as defined in section 1833(t)(1)(B)) to no less than 20 percent of the Medicare OPD fee schedule

[9] If 25 miles is a fixed limitation, nothing beyond that distance would be ''local'' under the safe harbor, unless the final rule includes alternate tests. If 25 miles is deemed to be local, an Eligible Entity could still comply with the ''local'' requirement beyond 25 miles under appropriate facts and circumstances.

[10] For additional background on this provision, see 65 FR 24400 (Apr. 26, 2000).

amount. The Secretary established the required procedures at 42 CFR 419.42.

Section 4523 of the BBA of 1997 also added subsection (D) to the definition of ''remuneration'' at section 1128A(i)(6) of the Act. That subsection, which was subsequently redesignated subsection (E), excluded from the definition of ''remuneration'' ''a reduction in the copayment amount for covered OPD services under section 1833(t)(5)(B) [of the Act].'' *Id.* Subsequent to the BBA of 1997, sections 201(a) and 202(a) of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (106 Pub. L. 113) redesignated subsection 1833(t)(5) as section 1833(t)(8). A corresponding change to the reference at 1128A(i)(6)(E) was not made. We propose to codify the exception to the definition of ''remuneration'' at 1128A(i)(6)(E) in our regulations at proposed 42 CFR 1003.110 (current § 1003.101). We propose to adopt language identical to the statutory language, except that we propose to change the reference from 1883(t)(5)(B) to 1883(t)(8)(B) to reflect the redesignation of the originally referenced subsection. We believe that our proposed change is consistent with congressional intent and merely addresses an inadvertent oversight. We solicit comments on this proposal.

Section 6402(d)(2)(B) of ACA amends the statutory definition of ''remuneration'' at section 1128A(i)(6) of the Act by adding four new subparagraphs, (F)–(I), protecting certain charitable and other programs. We propose to amend the definition of ''remuneration'' in the regulations to include the new statutory exceptions. We believe these exceptions are intended to protect certain arrangements that offer beneficiaries incentives to engage in their wellness or treatment regimens or that improve or increase beneficiary access to care, including better care coordination. However, in structuring the proposals, we are also mindful of the significant potential for abusive arrangements that offer vulnerable beneficiaries (or, in some cases, cooperating beneficiaries) remuneration, whether in cash or in kind, to induce them to obtain items or services billable to Medicare or Medicaid that may be unnecessary, too expensive, or of poor quality. The proposals set forth below aim to ensure that additional protections offered for arrangements that benefit patient care do not lead to such abuses.

Promotes Access/Low Risk of Harm

The first new exception to the definition of ''remuneration,'' added at section 1128A(i)(6)(F) of the Act, protects ''any other remuneration which promotes access to care and poses a low risk of harm to patients and Federal health care programs (as defined in section 1128B(f) and designated by the Secretary under regulations).''

For purposes of this exception, we propose that the phrase ''promotes access to care'' mean that the remuneration provided improves a particular beneficiary's ability to obtain medically necessary health care items and services. We solicit comments on whether this phrase should be interpreted more broadly, particularly in light of the movement towards coordinated or integrated care arrangements that depend, in part, on patient engagement. For example, we are considering whether to interpret ''promotes access to care'' to include encouraging patients to access care, supporting or helping patients to access care, or making access to care more convenient for patients than it would otherwise be. We request that any such comments include specific examples of remuneration that would promote access to care under a broader definition that would not be included within the proposed interpretation above. When providing examples, we request that commenters bear in mind that not all forms of remuneration provided to beneficiaries would be prohibited by the beneficiary inducements CMP. The beneficiary inducements CMP applies only to remuneration that the donor ''knows or should know is likely to influence [the recipient] to order or receive from a particular provider, practitioner, or supplier any item or service for which payment may be made'' by Medicare or Medicaid. Thus, remuneration that is not likely to influence a beneficiary to order or receive federally reimbursable items or services from a particular provider, practitioner, or supplier need not meet the conditions of this or any other exception.

We are also considering, and soliciting comments on, whether the test for the exception should be that the remuneration would promote access to care for a particular beneficiary or whether the exception should also apply to remuneration that promotes access to care for a defined beneficiary population generally, such as, by way of example, beneficiaries in a designated care network or beneficiaries being treated under a designated care protocol. Finally, we are considering, and soliciting comment on, whether we should more broadly interpret ''access to care'' to include care that is non-clinical but reasonably related to the patient's medical care, such as social services.

We propose to interpret the phrase ''low risk of harm to Medicare and Medicaid beneficiaries and the Medicare and Medicaid programs'' as meaning that the remuneration: (1) Is unlikely to interfere with, or skew, clinical decision-making; (2) is unlikely to increase costs to Federal health care programs or beneficiaries through overutilization or inappropriate utilization; and (3) does not raise patient-safety or quality-of-care concerns.

While some forms of remuneration covered by the prohibition at section 1128A(a)(5) of the Act may promote access to care and some forms may pose a low risk of harm to Medicare and Medicaid beneficiaries and the programs, the amendment to the statute applies only to forms of otherwise prohibited remuneration that meet both of these standards. By way of example, through our advisory opinion process, we have examined and approved arrangements that meet both requirements. In these arrangements, certain hospitals provide lodging assistance to patients and their families when the assistance was necessary for the patient to obtain appropriate care. Because of the specialized nature of these hospitals, the lodging programs were unlikely to steer patients to those particular hospitals, and the costs were not passed on to Federal programs. Yet, the programs enabled patients to get treatment that they might not otherwise have been able to access because of logistical hurdles. *See* OIG Advisory Opinion Nos. 11–01 and 11–16. Similarly, we believe that giving items that are necessary for patients to record and report health data, such as blood pressure cuffs or scales, to beneficiaries who could benefit from close monitoring of their blood pressure or weight, promotes access to care, because the recording and reporting of health data increase their ability to obtain medically necessary care and pose a low risk of harm to patients and Federal programs as long as receipt of the items is not conditioned on the patient obtaining other items or services from a particular provider or supplier.

However, not every program that benefits patients would meet the terms of this exception. We continue to believe that offering valuable gifts to beneficiaries in connection with direct or indirect marketing activities is not low risk to beneficiaries or to the Medicare and Medicaid programs. In addition, we are concerned that rewards offered by providers or suppliers to patients purportedly for compliance

with a treatment regimen pose a risk of abuse, in cases when the offerors know or should know that the rewards are likely to influence the recipients to order or receive from a particular source items or services paid for by Medicare or Medicaid. For example, patients might seek or agree to seek unnecessary or poor quality care to obtain the rewards, or providers and suppliers might order or seek orders for additional items or services to recoup the costs of giving the rewards. In either case, such rewards would not be low risk for patients and/or Federal health care programs.

While we are concerned about the significant potential for abuse when patients are offered rewards to induce them to receive items or services, we are also aware that, in some circumstances, patients might be offered incentives to encourage them to engage in arrangements that lower health care costs (without compromising quality) or that promote their own wellness and health care, for example, by participating fully in appropriate prescribed treatment, achieving appropriate treatment milestones, or following up with medically necessary appointments. We seek comments on whether otherwise prohibited incentives for compliance with treatment regimens should be permitted under this exception and if so, what limitations or safeguards should be required. For example, should the incentives be subject to specific dollar value limits? Should providers or suppliers offering the incentives be required to document the milestones reached to earn the incentives? Should the form of the incentive be required to bear a reasonable connection to the medical care? Are there quality or performance metrics or monitoring mechanisms that, if required for safe harbor compliance, would help ensure that protected patient incentives are not used to facilitate abusive arrangements that increase costs or compromise quality? Are there different considerations if the offeror of the incentive is at risk, in whole or in part (or directly or indirectly) for the treatment that the incentive is intended to encourage (*e.g.,* if the offeror is a risk-bearing accountable care organization, medical home, or health plan; a hospital subject to readmissions penalties; or a provider reimbursed under a bundled payment arrangement that includes some or all of the incentivized treatment)?

We recognize that the Department is undertaking a number of initiatives and demonstration programs with the goal of encouraging better care and better health at lower costs through innovative means, some of which could involve providing incentives to beneficiaries. These programs include, for example, a variety of permanent and demonstration programs testing accountable care organizations, medical homes, bundled payments, coordinated care programs, and other initiatives to improve the quality of care and reduce costs. Some participants in particular CMS models, such as the Bundled Payment for Care Initiative, may have waivers of the CMP for certain arrangements undertaken as part of the applicable CMS model.[11] With respect to CMS programs or models to which a waiver does not apply, we are considering whether to make a special provision in this rule for incentives offered by participants to beneficiaries covered by those programs. Many of these programs have safeguards built into their structures. For example, CMS reviews and monitors these programs, beginning with an application process, continuing through the development and implementation phases, and including a final assessment of the overall impact of the program on cost and quality of care. Because incentives offered to beneficiaries to foster patient engagement outside the auspices of such a CMS program are not subject to this oversight, we would not necessarily consider that remuneration (if otherwise prohibited by the beneficiary inducements CMP) to be low risk, unless it met the same safeguards that we finalize in connection with this proposed rule.

We are also soliciting comments on other types of remuneration to beneficiaries not mentioned in this preamble that both promote access to care and pose a low risk of harm to Medicare and Medicaid beneficiaries and the Medicare and Medicaid programs, to inform our development of regulatory text for this exception. We are not providing regulatory text at this time, but we solicit proposals for language, including specific examples of the types of remuneration to beneficiaries, that would implement the principles described above.

Retailer Rewards Programs

Section 6402(d)(2)(B) of ACA adds the following exception as new section 1128A(i)(6)(G) of the Act:

> The offer or transfer of items or services for free or less than fair market value by a person, if—
>
> (i) the items or services consist of coupons, rebates, or other rewards from a retailer;
>
> (ii) the items or services are offered or transferred on equal terms available to the general public, regardless of health insurance status; and
>
> (iii) the offer or transfer of the items or services is not tied to the provision of other items or services reimbursed in whole or in part by the program under title XVIII or a State health care program (as defined in section 1128(h)).

This exception concerns retailer rewards programs. We are aware that this genre of program has proliferated in recent years at grocery stores, drug stores, ''big-box,'' and other retailers. Although these retailer rewards programs vary in design, in general most attempt to incentivize and reward customer loyalty by providing benefits to shoppers. Many retailers offering such programs have pharmacies that sell items or services reimbursable by Federal health care programs.

OIG has interpreted the prohibition on offering gifts and other inducements to beneficiaries as permitting Medicare or Medicaid providers generally to offer beneficiaries inexpensive gifts or services (other than cash or cash equivalents) without violating the statute. For enforcement purposes, we have considered inexpensive gifts or services to be those that have a retail value of no more than $10 individually and no more than $50 in the aggregate annually per patient.[12] Notwithstanding this interpretation, we understand that many retailer reward programs have included a blanket exclusion of Federal health care program beneficiaries. Against this backdrop, we believe this new exception should increase retailers' willingness to include Federal health care program beneficiaries in their reward programs in appropriate circumstances.

Section 6402(d)(2)(B) of ACA excludes from the definition of ''remuneration'' rewards pursuant to a retailer rewards program that meet three criteria. The first criterion provides that the free or less-than-fair-market-value items or services must ''consist of coupons, rebates, or other rewards from a retailer.'' We propose to interpret these terms as follows. We interpret a ''coupon'' as something authorizing a discount on merchandise or services. For instance, if Alpha Store's rewards program mails its customers a flyer offering 20 percent off the purchase price of any item in the store, the flyer would be considered a coupon. Another example of a coupon would be a ''buy one get one free'' reward. We propose to

[11] Nothing in this proposed rule would change the application of existing waivers. It is possible that a final exception, as proposed here, might offer additional protection for participants in programs that have such a waiver.

[12] *See* Special Advisory Bulletin: Offering Gifts and Other Inducements to Beneficiaries, available at *http://oig.hhs.gov/fraud/docs/alertsandbulletins/SABGiftsandInducements.pdf.*

interpret ''rebate'' as a return on part of a payment. For example, if Beta Store's retailer reward program consisted of returning to customers a store credit equal to 1 percent of the total money the customer spent out-of-pocket at the retailer during the previous calendar year, it would constitute a rebate. In no event, however, could a retailer ''rebate'' an amount that exceeds what the customer spent at the store. We propose to interpret ''other rewards'' primarily as describing free items or services, such as store merchandise, gasoline, frequent flyer miles, etc. Finally, we interpret ''retailer'' as having its usual meaning, *i.e.,* an entity that sells items directly to consumers. We note, however, that individuals or entities that primarily provide services (*e.g.,* hospitals or physicians) would not be considered ''retailers.'' We are considering and solicit comments on whether entities that primarily sell items that require a prescription (*e.g.,* medical equipment stores) should be considered ''retailers.''

The second criterion requires that the items or services be offered or transferred on equal terms to the public, regardless of health insurance status. We propose to interpret this requirement consistent with OIG's longstanding concern that providers and suppliers of items or services reimbursable in whole or in part by Federal health care programs not discriminate against (''lemon drop'')—or, conversely, ''cherry pick''—certain patients on the basis of health insurance status. For example, we do not believe that a retailer that targets its rewards program to Medicare beneficiaries only would meet this criterion. On the other hand, if a retailer mailed a coupon for $10 off the next purchase of any item in its store, including prescriptions, to every resident in the surrounding ZIP Code, such a promotion likely would be in compliance with this provision because the coupon would be offered on equal terms to everyone in the ZIP Code, without regard to health insurance status.

The third criterion requires that the offer or transfer of the items or services not be tied to the provision of other items or services reimbursed in whole or in part by Medicare or an applicable State health care program. We believe that the objective of this criterion is to attenuate any connection between federally payable items and services and a loyalty program's rewards; this attenuation should be present both in the manner in which a reward is earned and in the manner in which the reward is redeemed, as explained further below. We do not interpret the prohibition on tying the free or below-market items and services to federally reimbursable services as requiring a complete severance of the offer from the medical care of the individual. At the front end of a transaction (''earning'' the reward), the reward should not be conditioned on the purchase of goods or services reimbursed in whole or in part by a Federal health care program and should not treat federally reimbursable items and services in a manner that is different from that in which non-reimbursable items and services are treated. For instance, a drugstore program that offered a $20 coupon to customers, including Medicare beneficiaries, who transferred their prescriptions to the drugstore would not meet this criterion because the $20 coupon would be tied to the drugstore's getting the recipients' Medicare Part D prescription drug business. On the other hand, a program that awarded a $20 coupon once a customer spent $1,000 out-of-pocket in the store—even if a portion of that $1,000 included copayments for prescription drugs—would likely meet the criterion. We also believe that this attenuation must be present on the ''redeeming'' end of the transaction and therefore interpret it to exclude from protection rewards programs in which the rewards themselves are items or services reimbursed in whole or in part by a Federal health care program. Thus, if Epsilon Store allowed its customers to redeem reward points only for cost-sharing (*i.e.,* the customer's out-of-pocket costs) on DME, prescription drugs, or other federally payable items or services, that program would not meet this criterion. On the other hand, if the $10 coupon referenced in the first example could be redeemed on anything purchased in the store, including the customer's out-of-pocket costs for federally reimbursable items, the coupon could meet the terms of the exception.

Financial-Need-Based Exception

A third new statutory provision, added at 1128A(i)(6)(H) of the Act, excepts from the definition of ''remuneration'' the offer or transfer of items or services for free or at less than fair market value after a determination that the recipient is in financial need and meets certain other criteria.

We begin our consideration of this new provision by noting that it concerns ''the offer or transfer of items or services.'' The term ''items or services'' does not include cash or instruments convertible to cash. This interpretation is consistent with our interpretation of ''permissible incentives for preventive care'' under section 1128A(i)(6)(D), as explained in the preamble to that final rule (''we are excluding from the scope of permissible exceptions cash and instruments convertible to cash'' (65 FR 24400, 24409 (Apr. 26, 2000)). Other proposed limits on what may be transferred are discussed in the paragraphs below.

The statute provides that protected items or services may not be offered as part of any advertisement or solicitation. We are including this requirement in our proposed regulation.

The second statutory criterion is that ''the items or services are not tied to the provision of other services reimbursed in whole or in part by the program under title XVIII or a State health care program. . . .'' To interpret this criterion in a meaningful way, it is necessary to consider it together with the next requirement, which is that there must be a reasonable connection between the items or services and the medical care of the individual. Each requirement is discussed in more detail below.

To be protected under the statute, the item or service being offered or transferred must not be tied to the provision of other reimbursed services. Consistent with our interpretation of the same criterion described in connection with the exception for retailer rewards programs described above, we do not interpret the prohibition on tying the free or below-market items and services to services reimbursable by Medicare or Medicaid as requiring a complete severance of the offer from the medical care of the individual. However, a provider's conditioning the offer or transfer of items or services on the patient's use of other services from the provider that would be reimbursed by Medicare or Medicaid would violate this requirement. For example, we interpret this criterion to exclude from protection offers by providers of lodging or transportation to receive a particular service from the provider.[13] We solicit comments on this interpretation.

The third statutory requirement is that there ''is a reasonable connection between the items or services and the medical care of the individual.'' We must interpret this requirement in the context of this particular exception. This exception is designed to help financially needy individuals access items or services related to their medical

[13] As explained above, we have approved lodging and transportation assistance programs through our advisory opinion process. However, we found that the programs were consistent with the exception to the definition of ''remuneration'' for programs that promote access to care and pose a low risk of harm to patients and Federal health care program beneficiaries.

care; unlike the preventive care exception referenced above, this exception is not designed to induce the patient to seek additional care.

For purposes of this requirement, we interpret ''medical care'' to refer to the treatment and management of illness or injury and the preservation of health through services offered by the medical, dental, pharmacy, nursing, and allied health professions. Consistent with the statutory language, our proposed regulation would require a ''reasonable connection'' between the remuneration and the patient's medical care. Whether a ''reasonable connection'' exists depends on a situation's specific facts and circumstances. In particular, this requirement warrants a dual consideration: Whether a reasonable connection exists from a medical perspective and whether a reasonable connection exists from a financial perspective. A reasonable connection exists from a medical perspective when the items or services would benefit or advance identifiable medical care or treatment that the individual patient is receiving. From a financial perspective, remuneration disproportionately large compared with the medical benefits conferred on the individual patient would not have a reasonable connection to the patient's medical care. Such remuneration gives rise to an inference that at least part of the transfer is being provided to induce beneficiaries to obtain additional services, and such remuneration would not be covered by the Financial-Need-Based Exception.

Examples of transfers of items or services that, in context, might qualify as reasonably connected to medical care include:

- Distribution of protective helmets and safety gear to hemophiliac children;
- distribution of pagers to alert patients with chronic medical conditions to take their drugs;
- provision of free blood pressure checks to hypertensive patients;
- distribution of free nutritional supplements to malnourished patients with end-stage renal disease (ESRD); and
- provision of air conditioners to asthmatic patients.

However, in another context, these same items and services would not likely qualify as reasonably connected to an individual patient's medical care. Most obviously, these would include transfers of items or services to an individual for whom they were not medically indicated. We are considering and seek comments, however, on the boundaries of the concept of ''medically indicated.'' For example, should a hospital be permitted to provide free bicycle helmets or other child safety devices to financially needy families when children are treated for injuries in the emergency department? We use this example, which arguably is not related to ''care,'' in order to inform comments on the limits of the ''reasonable connection to care'' requirement.

From a financial perspective, transfers of items or services of disproportionately large value compared with their medical benefit for the individual patient would not qualify. For example, transfer to a diabetic patient of a smartphone preloaded with an ''app'' relating to management of blood sugar levels would not likely qualify, while an offer to the diabetic patient of only a complimentary download of the app onto his or her own smartphone might.

We are considering whether we can (and, if so, whether we should) identify specific conditions under which remuneration would be deemed to be ''reasonably connected'' to the patient's medical care, and we solicit suggestions for possible conditions. For example, one condition we are considering is whether the patient's physician or other health care professional has concluded that the items or services would benefit the individual patient's treatment. Another possible condition is whether, absent the transfer of needed health care items or services, the patient would otherwise be expected to lack access to them for reasons including lack of payment resources; lack of appropriate health care facilities in the patient's community or the surrounding areas; and unique physical, behavioral, or mental health issues that might interfere with the patient's ability to otherwise obtain access. Such circumstances in a patient's case would support the argument for a reasonable connection. We solicit comments about what additional or alternative factors should be considered, if any, in the determination of a reasonable connection between items or services offered or transferred and the medical care of the individual.

The fourth and final statutory requirement is that the items or services may be provided only ''after determining in good faith that the individual is in financial need.'' We propose to interpret this provision as requiring an individualized assessment of the patient's financial need on a case-by-case basis. Moreover, the assessment must be conducted in good faith. We believe, among other things, that a good faith assessment requires the use of a reasonable set of income guidelines, uniformly applied. This reasonable set of financial need guidelines should be based on objective criteria and be appropriate for the applicable locality. Under our proposal, ''financial need'' would not be limited to ''indigence,'' but could include any reasonable measure of financial hardship. What constitutes a good faith determination of ''financial need'' may vary depending on the individual patient's circumstances; the individual or entity offering the items or services should have flexibility to consider relevant variables. We are considering whether we have authority to require documentation of the financial need assessment as a condition of the exception. Regardless, it would be prudent for those seeking protection under the proposed exception to maintain accurate and contemporaneous documentation of the need assessment and the criteria applied.

Waivers of Cost-Sharing for the First Fill of a Generic Drug

The fourth new provision added at section 1128A(i)(6)(I) of the Act excepts from the definition of ''remuneration'' waivers by a PDP sponsor of a Part D plan or MA organization offering MA–PD plans of any copayment that would be otherwise owed by their enrollees for the first fill of a covered Part D drug that is a generic drug. Section 6402(d)(2)(B) of ACA does not define the term ''generic drug,'' so we propose to rely on the definition in the Part D regulations at 42 CFR 423.4.

The type of waiver described in the statute is designed to minimize drug costs by encouraging the use of lower cost generic drugs. To implement this waiver, we propose interpreting this statutory provision consistently with current CMS guidance. Thus, sponsors desiring to offer these waivers to their enrollees would be required to disclose this incentive program in their benefit plan package submissions to CMS. We propose to include this requirement both to ensure consistency with current CMS practice and to ensure transparency to beneficiaries when they select Part D or MA plans. We propose to make this exception effective for coverage years beginning after publication of the final rule. We note, however, that CMS already permits these waivers as part of Part D and MA plan benefit designs. Although this proposed regulation will not be effective until a future date, we will not exercise our enforcement authority against plans complying with CMS requirements for these waivers in the interim.

2. Gainsharing

The Gainsharing CMP is a self-implementing law that prohibits

hospitals and critical access hospitals from knowingly paying a physician to induce the physician to reduce or limit services provided to Medicare or Medicaid beneficiaries who are under the physician's direct care. We proposed regulations in 1994 to interpret the Gainsharing CMP (59 FR 61571 (Dec. 1, 1994)), but the proposed rule was not finalized. In July 1999, we published a Special Advisory Bulletin titled ''Gainsharing Arrangements and CMPs for Hospital Payments to Physicians to Reduce or Limit Services to Beneficiaries'' (the Gainsharing SAB), available at: *https://oig.hhs.gov/fraud/docs/alertsandbulletins/gainsh.htm.* In the Gainsharing SAB, we explained that the Gainsharing CMP is broad and prohibits any hospital incentive plan that involves payments to physicians to encourage reductions or limitations in items or services provided to patients under the physicians' clinical care. We observed that the statute does not limit this prohibition to reductions or limitations of *medically necessary* items or services.

We have previously observed that not all changes in practice necessarily constitute a reduction of services. Health care payment and delivery systems are changing, with greater emphasis on accountability for providing high quality care at lower costs. We propose to codify the Gainsharing CMP in our regulations and interpret certain provisions in a manner that reflects today's health care landscape.

OIG has recognized that gainsharing can be beneficial. In fact, we have approved 16 gainsharing arrangements through our advisory opinion process.[14] We found that the particular facts presented to us in those arrangements presented few risks relative to those of other gainsharing arrangements. The gainsharing programs in the advisory opinions set out specific actions to be taken and tied remuneration to the actual cost savings attributable to the arrangements. They included specific safeguards against patient and program abuse.

Citing to many of these advisory opinions, the Medicare Payment Advisory Commission (MedPAC) recommended that Congress authorize the Secretary to allow gainsharing arrangements and to regulate those arrangements to protect the quality of care and minimize financial incentives that could influence physician referrals. *See* MedPAC, *Report to the Congress: Physician-Owned Specialty Hospitals* (March 2005) (MedPAC Report). The MedPAC Report provided examples of safeguards included in OIG advisory opinions and posited that gainsharing programs could lead to program savings over time. *See id.* at p. 46.

Later that year, the Chief Counsel to the Inspector General testified to the House Committee on Ways and Means about gainsharing. The testimony highlighted three types of safeguards that the OIG looked for when evaluating the risks posed by a gainsharing program: Measures that promote accountability, adequate quality controls, and controls on payments that may change referral patterns. *See* Testimony of Lewis Morris, Chief Counsel to the Inspector General, House Committee on Ways and Means, Subcommittee on Health (October 7, 2005), available at *https://oig.hhs.gov/testimony/docs/2005/Gainsharing10-07-05.pdf.* Although the testimony focused largely on specific risks in gainsharing programs, and safeguards to counteract those risks, the testimony also explained that if properly structured, ''gainsharing arrangements may offer opportunities for hospitals to reduce costs without causing inappropriate reductions in medical services or rewarding referrals of Federal health care program patients.'' *Id.* at p. 1. In fact, OIG would be unlikely to bring a case against a hospital or physician for a gainsharing arrangement that included patient and program safeguards such as those identified in our advisory opinions.[15]

In addition, since 2005, Congress has authorized, and the Secretary has approved, a number of projects involving gainsharing. For example, the Deficit Reduction Act of 2005 [16] required the Secretary to establish a gainsharing program to test and evaluate arrangements between hospitals and physicians designed to govern utilization of certain inpatient services to improve the quality and efficiency of care. Section 3022 of ACA required the Secretary to establish a Medicare shared savings program (Shared Savings program) and allowed the Secretary to waive such requirements of sections 1128A and 1128B and Title XVIII of the Act as may be necessary to carry out the provisions of section 3022. In the Interim Final Rule implementing the Shared Savings program waivers, the Secretary waived the Gainsharing CMP with respect to certain aspects of the Shared Savings program, subject to applicable conditions. *See* 76 FR 67992 (Nov. 2, 2011).

Both government and private insurers have increased efforts to lower costs and improve the quality of care. Better ways of measuring quality and outcomes exist now than in the past. The growth of health information technology, developments in data analytics and quality metrics, and broader use of evidence-based medicine all facilitate such measurements and accountability for performance. For example, the Shared Savings program, as enacted, promotes an evidence-based medicine approach for accountable care organizations participating in the Shared Savings program (ACOs): ''[t]he ACO shall define processes to promote evidence-based medicine and patient engagement, report on quality and cost measures, and coordinate care, such as through the use of telehealth, remote patient monitoring, and other such enabling technologies.'' Section 1899(b)(2)(G) of the Act.

Notwithstanding these and similar developments, the Gainsharing CMP has not been amended by Congress. It prohibits a hospital from knowingly making a payment, directly or indirectly, to a physician as an inducement to reduce or limit services provided to Medicare or Medicaid beneficiaries who are under the direct care of the physician. The statute does not prohibit only payments to reduce medically necessary services; it prohibits payments to reduce or limit ''services.'' Without a change in the statute, we continue to believe that we cannot read a ''medically necessary'' element into the prohibition. However, given the changes in the practice of medicine over the years, including collaborative efforts among providers and practitioners and the rise of widely accepted clinical metrics, we are considering a narrower interpretation of the term ''reduce or limit services'' than we have previously held.

Since issuing the Gainsharing SAB, we have had the opportunity to examine a number of different gainsharing arrangements through our advisory opinion process. In each favorable opinion we issued, we found that the cost-saving measures proposed by the hospitals implicated the statute. For example, in OIG Advisory Opinion No. 05–01, we stated: ''the Proposed Arrangement constitutes an inducement to reduce or limit the current medical

[14] OIG Advisory Opinion Nos.: 00–02, 01–01, 05–01, 05–02, 05–03, 05–04, 05–05, 05–06, 06–22, 07–21, 07–22, 08–09, 08–15, 08–21, 09–06, 12–22.

[15] OIG has never pursued any gainsharing CMP case. OIG always has been, and remains, open to pursuing a gainsharing CMP case under appropriate facts. Prior to initiating any such case, we would consider the factors set out in the advisory opinions and considerations discussed in this preamble. Pending further notice from OIG, gainsharing arrangements are not an enforcement priority for OIG unless the arrangement lacks sufficient patient and program safeguards.

[16] Deficit Reduction Act of 2005, Public Law 109–171, § 5007, 120 Stat. 4, 34–36 (2006).

practice at the Hospital.'' We went on to state that ''[w]e recognize that the current medical practice may involve care that exceeds the requirements of medical necessity. However, whether the current medical practice reflects necessity or prudence is irrelevant for purposes of the CMP.'' OIG Advisory Opinion No. 05–01 (issued Jan. 28, 2005, at pp. 7–8).[17] This language implies that any change to current medical practice that a hospital might initiate is potentially a reduction in care that could trigger CMP liability. However, as hospitals move towards using objective quality metrics, we recognize that a change in practice does not necessarily constitute a limitation or reduction of services, but may in fact constitute an improvement in patient care or a reduction in cost without reducing patient care or diminishing its quality.

The regulatory text we are proposing largely tracks the statute and is similar to the text proposed in 1994. Besides codifying the gainsharing prohibition itself, we propose to add a definition of ''hospital'' to proposed section 42 CFR 1003.110 (current § 1003.101). This definition would refer to the definitions of ''hospital'' and ''critical access hospital'' in the Act. In addition, however, we are considering and solicit comments on whether we should include a definition of the term ''reduce or limit services'' to address the considerations we express above. If so, we solicit specific proposals and safeguards that we should include in this definition to ensure that the goal of the statute is met: To prevent hospitals from paying physicians to discharge patients too soon or take other action that inappropriately limits a beneficiary's care. We are not proposing text of a definition at this time. We specifically solicit comments on the following areas of concern, but we welcome any other comments relating to the topic:

- We have interpreted the prohibition on payments to reduce or limit *services* as including payments to limit *items* used in providing services, which is consistent with the definition of ''services'' found at 42 CFR 400.202. Is this interpretation appropriate or necessary in the context of the Gainsharing CMP?
- Should a hospital's decision to standardize certain items (*e.g.,* surgical instruments, medical devices, or drugs) be deemed to constitute reducing or limiting care? Would the answer be the same if the physicians were simply encouraged to choose from the standardized items, but other items remained available for use when deemed appropriate for any particular patient?
- Should a hospital's decision to rely on protocols based on objective quality metrics for certain procedures ever be deemed to constitute reducing or limiting care (*e.g.,* protocols calling for the discontinuance of a prophylactic antibiotic after a specific period of time)? Should hospitals deciding to compensate physicians in connection with the use of such protocols be required to maintain quality-monitoring procedures to ensure that these protocols do not, even inadvertently, involve reductions in care? What types of monitoring and documentation would be reasonable and appropriate?
- Should a hospital desiring to standardize items or processes as part of a gainsharing program be required to establish certain thresholds based on historical experience or clinical protocols, beyond which participating physicians could not share in cost savings (*i.e.,* change beyond the relevant threshold would be deemed to constitute reducing or limiting services)? For example, in OIG Advisory Opinion 05–01, the hospital had a policy of performing blood cross-matching (in addition to typing and screening) in all cases and proposed to perform cross-matching only when a patient required a transfusion. The facts in that opinion were that less than 30 percent of cases actually required transfusions, so 30 percent was used as the threshold. Therefore, the surgeon group would not receive any share of savings resulting from performing cross-matching in fewer than 30 percent of cases.
- If we define ''reduce or limit services,'' should the regulation include a requirement that the hospital and/or physician participating in a gainsharing program notify potentially affected patients about the program? Would such a requirement help ensure that gainsharing payments were for legitimate purposes and not for the purpose of reducing or limiting care?

Our proposal to define the term ''reduce or limit services'' and our solicitation of comments related to that definition reflect our recognition that the delivery of health care, and the potential safeguards to protect patients and promote accountability for outcomes, has been changing. We seek to interpret the statutory prohibition broadly enough to protect beneficiaries and Federal health care programs, but narrowly enough to allow low risk programs that further the goal of delivering high quality health care at a lower cost. We emphasize that this proposed regulation would interpret the Gainsharing CMP. We have no authority to create an exception to the statute.

III. Regulatory Impact Statement

We have examined the impact of this proposed rule as required by Executive Order 12866, the Regulatory Flexibility Act (RFA) of 1980, the Unfunded Mandates Reform Act of 1995, and Executive Order 13132.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects, *i.e.,* $100 million or more in any given year. This is not a major rule as defined at 5 U.S.C. 804(2); it is not economically significant because it does not reach that economic threshold.

This proposed rule would implement or codify new and existing CMP authorities and exceptions and implement new or revised anti-kickback statute safe harbors. The vast majority of providers and Federal health care programs would be minimally impacted, if at all, by these proposed revisions.

The changes to the safe harbors and CMP authorities and exceptions would allow providers to enter into certain beneficial arrangements. In doing so, this regulation would impose no requirements on any party. Providers would be allowed to voluntarily seek to comply with these provisions so that they would have assurance that participating in certain agreements would not subject them to liability under the anti-kickback statute and the beneficiary inducement or gainsharing CMPs. These safe harbors and exceptions facilitate providers' ability to provide important health care and related services to communities in need. We believe that the aggregate economic impact of the changes to these regulations would be minimal and

[17] Under section 1862 of the Act, no payment may be made under Part A or Part B for any expenses incurred for items or services that (with certain exceptions) are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. Under the Part A prospective payment system (PPS) for hospital inpatient stays, payments are made for hospital stays that are reasonable and necessary; however, additional payment is not made if a patient receives individual items or services in excess of, or more expensive than, those factored into the PPS payment for covered care.

would have no effect on the economy or on Federal or State expenditures.

Accordingly, we believe that the likely aggregate economic effect of these regulations would be significantly less than $100 million.

Regulatory Flexibility Act

The RFA and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, require agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, non-profit organizations, and government agencies. Most providers are considered small entities by having revenues of $7 million to $35.5 million or less in any one year. For purposes of the RFA, most physicians and suppliers are considered small entities.

The changes to the CMP provisions would be minimal, and the changes to the anti-kickback statute safe harbors would not significantly affect small providers as these would not impose any requirement on any party.

In summary, we have concluded that this proposed rule should not have a significant impact on the operations of a substantial number of small providers and that a regulatory flexibility analysis is not required for this rulemaking.

In addition, section 1102(b) of the Act (42 U.S.C. 1302) requires us to prepare a regulatory impact analysis if a rule under Titles XVIII or XIX or section B of Title XI of the Act may have a significant impact on the operations of a substantial number of small rural hospitals. For the reasons stated above, we do not believe that any provisions or changes proposed here would have a significant impact on the operations of rural hospitals. Thus, an analysis under section 1102(b) is not required for this rulemaking.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million, adjusted for inflation. We believe that no significant costs would be associated with these proposed revisions that would impose any mandates on State, local, or tribal governments or the private sector that would result in an expenditure of $141 million (after adjustment for inflation) in any given year.

Executive Order 13132

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirements or costs on State and local governments, preempts State law, or otherwise has Federalism implications. In reviewing this rule under the threshold criteria of Executive Order 13132, we have determined that this proposed rule would not significantly affect the rights, roles, and responsibilities of State or local governments.

IV. Paperwork Reduction Act

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

List of Subjects

42 CFR Part 1001

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare.

42 CFR Part 1003

Fraud, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping.

For the reasons set forth in the preamble, the Office of Inspector General, Department of Health and Human Services, proposes to amend 42 CFR chapter V as follows:

PART 1001—PROGRAM INTEGRITY—MEDICARE AND STATE HEALTH CARE PROGRAMS

■ 1. The authority citation for part 1001 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(j), 1395u(k), 1395w–104(e)(6), 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh; and sec. 2455, Public Law 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

■ 2. Section 1001.952 is amended by revising paragraphs (f)(2), (k) introductory text, and by adding paragraphs (k)(3), (k)(4), (z), (aa), and (bb) to read as follows:

§ 1001.952 Exceptions.

* * * * *

(f) * * *

(2) Any payment the participant makes to the referral service is assessed equally against and collected equally from all participants and is based only on the cost of operating the referral service, and not on the volume or value of any referrals to or business otherwise generated by either party for the other party for which payment may be made in whole or in part under Medicare, Medicaid, or ther Federal health care programs.

* * * * *

(k) *Waiver of beneficiary coinsurance and deductible amounts.* As used in section 1128B of the Act, ''remuneration'' does not include any reduction or waiver of a Medicare or a State health care program beneficiary's obligation to pay coinsurance or deductible amounts as long as all the standards are met within one of the following categories of health care providers or suppliers.

* * * * *

(3) If the copayment, coinsurance, or deductible amounts are owed to a pharmacy (including, but not limited to, pharmacies of the Indian Health Service, Indian tribes, tribal organizations, and urban Indian organizations) for cost-sharing imposed under part D of Title XVIII provided that—

(i) The waiver is not offered as part of an advertisement or solicitation and

(ii) Except for waivers or reductions offered to subsidy-eligible individuals (as defined in section 1860D–14(a)(3)) to which only requirement in paragraph (k)(3)(i) of this section applies:

(A) The pharmacy does not routinely waive copayment, coinsurance, or deductible amounts and

(B) The pharmacy waives the copayment, coinsurance, or deductible amounts only after determining in good faith that the individual is in financial need or fails to collect the copayment, coinsurance, or deductible after making reasonable collection efforts.

(4) If the coinsurance or deductible amounts are owed to an ambulance provider or supplier for emergency ambulance services for which Medicare pays under a fee-for-service payment system and all the following conditions are met:

(i) The ambulance provider or supplier is owned and operated by a State, a political subdivision of a State, or a federally recognized Indian tribe;

(ii) The ambulance provider or supplier is the Medicare Part B provider or supplier of the emergency ambulance services;

(iii) The ambulance provider's or supplier's reduction or waiver of coinsurance or deductible amounts is not considered to be the furnishing of free services paid for directly or indirectly by a government entity;

(iv) The ambulance supplier offers the reduction or waiver on a uniform basis, without regard to patient-specific factors; and

(v) The ambulance provider or supplier must not later claim the amount reduced or waived as a bad debt for payment purposes under Medicare or otherwise shift the burden of the reduction or waiver onto Medicare, a State health care program, other payers, or individuals.

* * * * *

(z) As used in section 1128B of the Act, ''remuneration'' does not include any remuneration between a federally qualified health center (or an entity controlled by such a health center) and a Medicare Advantage organization pursuant to a written agreement described in section 1853(a)(4) of the Act.

(aa) *Medicare Coverage Gap Discount Program.* As used in section 1128B of the Act, ''remuneration'' does not include a discount in the price of a drug when the discount is furnished to a beneficiary under the Medicare Coverage Gap Discount Program established in section 1860D–14A of the Act, so long as all the following requirements are met:

(1) The discounted drug meets the definition of ''applicable drug'' set forth in section 1860D–14A(g) of the Act;

(2) The beneficiary receiving the discount meets the definition of ''applicable beneficiary'' set forth in section 1860D–14A(g) of the Act; and

(3) The manufacturer of the drug participates in, and is in full compliance with all requirements of, the Medicare Coverage Gap Discount Program.

(bb) *Local Transportation.* As used in section 1128B of the Act, ''remuneration'' does not include free or discounted local transportation made available by an Eligible Entity (as defined in this paragraph (bb)) to established patients who are Federal health care program beneficiaries for the purpose of obtaining medically necessary items or services if all the following conditions are met:

(1) The availability of the free or discounted local transportation services is not determined in a manner related to the past or anticipated volume or value of Federal health care program business;

(2) The free or discounted local transportation services do not take the form of air, luxury, or ambulance-level transportation;

(3) The free or discounted local transportation services are not marketed or advertised, no marketing of health care items and services occurs during the course of the transportation or at any time by drivers who provide the transportation, and drivers or others arranging for the transportation are not paid on a per-beneficiary transported basis;

(4) The Eligible Entity that makes the free or discounted transportation available furnishes the services only:

(i) To the established patient (and, if needed, a person to assist the patient) to obtain medically necessary items or services, and

(ii) Within the local area of the health care provider or supplier to which the patient would be transported;

(5) The Eligible Entity that makes the transportation available bears the costs of the free or discounted local transportation services and does not shift the burden of these costs onto Medicare, a State health care program, other payers, or individuals.

Note to paragraph (bb): For purposes of this paragraph (bb), an ''Eligible Entity'' is any individual or entity, except for individuals or entities (or family members or others acting on their behalf) that primarily supply health care items; and if the distance from the patient's location to the provider or supplier to which the patient would be transported is no more than 25 miles, the transportation is deemed to be local.

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

■ 3. The authority citation for part 1003 continues to read as follows:

Authority: 42 U.S.C. 262a, 1302, 1320–7, 1320a–7a, 1320b–10, 1395u(j), 1395u(k), 1395cc(j), 1395w–141(i)(3), 1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 11131(c), and 11137(b)(2).

■ 4. Section 1003.101 as proposed to be redesignated as 1003.110 and amended at 79 FR 27080 (May 12, 2014) is further amended by adding the definition of ''Hospital'' and by amending the definition of ''Remuneration'' by revising the introductory text and adding paragraphs (5) through (9) to read as follows:

§ 1003.101 Definitions.

* * * * *

Hospital means a hospital as defined in section 1861(e) of the Act or critical access hospital as defined in section 1861(mm)(1) of the Act.

* * * * *

Remuneration, for the purposes of § 1003.1000(a) of this part, is consistent with the definition in section 1128A(i)(6) of the Act and includes the waiver of coinsurance and deductible amounts (or any part thereof) and transfers of items or services for free or for other than fair market value. The term ''remuneration'' does not include—

* * * * *

(5) A reduction in the copayment amount for covered OPD services under section 1833(t)(8)(B) of the Act;

(6) [Reserved];

(7) The offer or transfer of items or services for free or less than fair market value by a person if—

(i) The items or services consist of coupons, rebates, or other rewards from a retailer;

(ii) The items or services are offered or transferred on equal terms available to the general public, regardless of health insurance status; and

(iii) The offer or transfer of the items or services is not tied to the provision of other items or services reimbursed in whole or in part by the program under title XVIII or a State health care program (as defined in section 1128(h) of the Act);

(8) The offer or transfer of items or services for free or less than fair market value by a person, if—

(i) The items or services are not offered as part of any advertisement or solicitation;

(ii) The offer or transfer of the items or services is not tied to the provision of other items or services reimbursed in whole or in part by the program under Title XVIII or a State health care program;

(iii) There is a reasonable connection between the items or services and the medical care of the individual; and

(iv) The person provides the items or services after determining in good faith that the individual is in financial need;

(9) Waivers by a sponsor of a Prescription Drug Plan under part D of Title XVIII or a Medicare Advantage organization offering an MA–PD Plan under part C of such title of any copayment for the first fill of a covered Part D drug (as defined in section 1860D–2(e)) that is a generic drug (as defined in 42 CFR 423.4) for individuals enrolled in the Prescription Drug Plan or MA–PD Plan, respectively, as long as such waivers are included in the benefit design package submitted to CMS. This exception is effective for coverage years beginning after publication of the final rule.

* * * * *

■ 5. Part 1003, as proposed to be amended at 79 FR 27080, (May 12, 2014) is further amended by adding subpart G to read as follows:

Subpart G—CMPs for Gainsharing Violations

Sec.

1003.700 Basis for civil money penalties.

1003.710 Amount of penalties.
1003.720 Determinations regarding the amount of penalties.

§ 1003.700 Basis for civil money penalties.

OIG may impose a penalty against any person who it determines in accordance with this part—

(a) Is a hospital that knowingly makes a payment, directly or indirectly, overtly or covertly, in cash or in kind, to a physician as an inducement to reduce or limit services provided to an individual who is eligible for Medicare or Medicaid benefits and who is under the direct care of the physician;

(b) Is a physician who knowingly receives a payment described in paragraph (a) of this section.

§ 1003.710 Amount of penalties.

(a) OIG may impose a penalty against a hospital of not more than $2,000 for each individual for whom payment was made to a physician in violation of § 1003.700.

(b) OIG may impose a penalty against a physician of not more than $2,000 for each individual for whom the physician received payment from a hospital in violation of § 1003.700.

§ 1003.720 Determinations regarding the amount of penalties.

In determining the amount of any penalty or assessment, OIG will consider the factors listed in § 1003.140, as well as the following:

(a) The nature of the payment designed to reduce or limit services and the circumstances under which it was made,

(b) The extent to which the payment encouraged the limiting of medical care or the premature discharge of the patient,

(c) The extent to which the payment caused actual or potential harm to program beneficiaries, and

(d) The financial condition of the hospital (or physician) involved in the offering (or acceptance) of the payment.

Dated: March 1, 2014.

Daniel R. Levinson,

Inspector General.

Approved: September 18, 2014.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2014–23182 Filed 10–2–14; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 140519437–4437–01]

RIN 0648–BE24

Fisheries of the Exclusive Economic Zone Off Alaska; Establishing Transit Areas through Walrus Protection Areas at Round Island and Cape Peirce, Northern Bristol Bay, Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would implement Amendment 107 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). If approved, Amendment 107 would establish seasonal transit areas for vessels designated on Federal Fisheries Permits (FFPs) through Walrus Protection Areas in northern Bristol Bay, AK. This action would allow vessels designated on FFPs to transit through Walrus Protection Areas in the Exclusive Economic Zone (EEZ) near Round Island and Cape Peirce from April 1 through August 15, annually. This action is necessary to restore the access of federally permitted vessels to transit through Walrus Protection Areas that was limited by regulations implementing Amendment 83 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) and to maintain suitable protection for walruses on Round Island and Cape Peirce. This action would maintain an existing prohibition on deploying fishing gear in Walrus Protection Areas by vessels designated on an FFP. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the BSAI FMP, and other applicable law.

DATES: Submit comments on or before November 3, 2014.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2014–0066, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0066,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

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), 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 Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (Analysis) prepared for this action are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov/sustainablefisheries/.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed action may be submitted to NMFS at the above address and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Anne Marie Eich, 907–586–7172.

SUPPLEMENTARY INFORMATION: NMFS manages groundfish fisheries in the EEZ off Alaska under the GOA FMP and the BSAI FMP. The North Pacific Fishery Management Council (Council) prepared these FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

Background

The following sections of the preamble describe: (1) The Walrus Protection Areas; (2) the effects of disturbance on walruses; (3) the areas and vessels affected by this proposed action; and (4) the proposed action.

Walrus Protection Areas

Thousands of walruses, primarily adult males, use haulouts in northern Bristol Bay, AK, during spring through fall each year. The State of Alaska (State) and NMFS have implemented a variety of management measures to protect walruses in northern Bristol Bay. In 1960, the State established the Walrus Islands State Game Sanctuary (Walrus Sanctuary) to protect a group of seven small, craggy islands and their adjacent waters in northern Bristol Bay commonly used by walruses. The Walrus Sanctuary includes Round Island, Summit Island, Crooked Island, High Island, Black Rock, and The Twins.

The State maintains the most protective management measures around Round Island, one of the largest and well-established walrus haulouts in northern Bristol Bay. The State permits visitors to Round Island for wildlife viewing or research. The State prohibits all other vessel traffic within Alaska State waters (from 0 to 3 nautical miles (nm) from shore) around Round Island, but the State has no restrictions on vessel traffic in Alaska State waters around the other islands in the Walrus Sanctuary. The State limited vessel traffic around Round Island to reduce the potential for vessel activities that disturb walruses. Walruses are known to be sensitive to disturbance. Walrus calves or adults can be injured or killed by stampeding adults (see Section 3.2.1.6 of the Analysis).

The Council has recommended and NMFS has implemented a series of closure areas, known as Walrus Protection Areas, around important walrus haulout sites in Bristol Bay to reduce potential disturbances to walruses from fishing activities. These management measures apply in a portion of Federal waters in the EEZ (i.e., from 3 nm to 12 nm from shore). Walrus Protection Areas were first implemented in the early 1990s to reduce disturbance from fishing activities based on apparent correlations between fishing activities and observed declines in walrus populations at haulouts in northern Bristol Bay during the 1980s.

In January 1990, NMFS implemented Amendment 13 to the BSAI FMP to prohibit groundfish fishing within 3 to 12 nm from Round Island, The Twins, and Cape Peirce in northern Bristol Bay from April 1 through September 30 (54 FR 50386, December 6, 1989; corrected 55 FR 1036, January 11, 1990; technically amended 56 FR 5775, February 13, 1991). The Council and NMFS intended Amendment 13 to reduce potential disturbance to walruses from groundfish fisheries. Amendment 13 prohibited vessels from fishing for groundfish in the areas around Round Island, Cape Peirce, and The Twins because these areas are known to be important terrestrial haulouts for walruses. Specifically, Round Island and Cape Peirce are the two largest walrus terrestrial haulouts in the United States. Amendment 13 prohibited vessels from fishing for groundfish annually from April 1 through September 30 to reduce disturbance to walruses during periods of peak walrus use (see Section 1.2 of the Analysis for additional information on patterns of use of haulouts by walruses). These regulations were in effect from January 1, 1990 through April 26, 1992.

On April 26, 1992, NMFS implemented Amendment 17 to the BSAI FMP (57 FR 10430, March 26, 1992). Amendment 17 encompassed the same areas and seasonal closure period as those established under Amendment 13. However, Amendment 17 closed Federal waters to all federally permitted vessels in 3 to 12 nm zones around Round Island, the Twins, and Cape Peirce annually from April 1 through September 30. Amendment 17 defined federally permitted vessels as vessels that are designated on an FFP (see regulations at § 679.22(a)(4)). Amendment 17 was more restrictive than Amendment 13. Amendment 13 prohibited fishing for groundfish, but did not prohibit vessels designated on an FFP from entering and transiting through Walrus Protection Areas. Because Amendment 17 prohibited entry and transit by vessels designated on an FFP in these areas, it effectively prohibited groundfish fishing in these areas because a vessel cannot fish for groundfish in Federal waters without being designated on an FFP. The regulations implementing Amendment 17 superseded those implementing Amendment 13.

Effects of Disturbance on Walruses

Since the early 1990s, additional research by the Alaska Department of Fish and Game has improved NMFS' understanding of the potential disturbance to walruses from vessel traffic. The new research indicates that disturbance to walruses from vessel traffic more than 3 nm from haulouts has not been observed in northern Bristol Bay. Specifically, Section 3.2.1.6 of the Analysis notes that recent research at Round Island indicates that walruses were not disturbed (e.g., raised their heads, reoriented, or dispersed) by vessel traffic more than 3 nm from Round Island. In 2011, Sell and Weiss from the Alaska Department of Fish and Game reported that of the 56 observed anthropogenic events (e.g., vessel traffic, aircraft traffic) occurring more than 3 nm from Round Island, only four events resulted in observable disturbance to walruses. All these disturbance events were due to aircraft noise. In 2012, Weiss and Sell reported that they did not observe any disturbance to walruses from anthropogenic events occurring more than 3 nm from Round Island.

Based on these findings, and other research described in Section 3.2.1.6 of the Analysis, the U.S. Fish and Wildlife Service (USFWS) released guidelines for vessels operating near walrus haulouts in Bristol Bay in September, 2012. Under the Marine Mammal Protection Act of 1972 (MMPA), walruses are co-managed by USFWS and the Eskimo Walrus Commission (EWC), with scientific research support from the U.S. Geological Survey and the State. The guidelines released by USFWS are intended to minimize potential disturbance to walruses. These guidelines include descriptions of disturbance behavior and best-practices for mariners to avoid disturbance to walruses. Best-practices include:

- Marine vessels 50 feet in length or less should remain at least 0.5 nm away from hauled out walruses;
- Marine vessels 50–100 feet in length should remain at least 1 nm away from hauled out walruses;
- Marine vessels greater than 100 feet in length should remain at least 3 nm away from hauled out walruses;
- All vessels should refrain from anchoring, or conducting tendering or fishing operations within 3 miles of hauled out walruses;
- All vessels should avoid sudden changes in engine noise, using loud speakers, loud deck equipment or other operations that produce noise when in the vicinity of walrus haulouts;
- All vessels should avoid excessive speed or sudden changes in speed or direction when approaching or departing walrus haulout areas;
- All vessels should reduce speed and maintain a minimum 0.5 nm exclusion zone around feeding walruses;
- All vessels should not operate in such a manner to separate members of a group of walruses from other members of the group; and
- All vessels should adjust speed according to weather conditions to reduce the likelihood of injury to walruses.

During the development of this proposed action, the Council communicated with the USFWS and the Qayassiq Walrus Commission to avoid

adverse impacts to walruses from this proposed action. As noted in Section 3.2.7 of the Analysis, all of the alternative management approaches considered, and this proposed action specifically, were determined to be consistent with the best practices in the guidelines established by USFWS and would not disturb walruses more than existing management. Therefore, NMFS concludes that this proposed action would have no adverse impact on walruses.

Areas and Vessels Affected by This Proposed Action

This proposed action would apply in the northern Bristol Bay. This proposed action would apply to Federal waters in statistical area 514 of the BSAI, as shown in Figure 1 to 50 CFR part 679. This proposed action would not apply in State waters. The State restricts vessel transit only in State waters around Round Island, but not in State waters elsewhere in the area. All vessels, including vessels designated on an FFP, can transit through State waters around Cape Peirce and The Twins. This proposed action would only affect vessels designated on an FFP. Vessels that are not designated on an FFP are not regulated in the Walrus Protection Areas and can enter and transit through Walrus Protection Areas.

Prior to 2012, vessel owners were able to easily surrender an FFP for a period of time to allow that vessel to transit through Walrus Protection Areas. Some vessel owners surrendered their FFPs during the spring and summer so that these vessels could transit through Walrus Protection Areas around Round Island and Cape Peirce when operating as a tender. A tender is a vessel that is used to transport unprocessed fish or shellfish received from another vessel to an associated processor (see definition at § 679.2). In northern Bristol Bay, many vessels that are active in federally managed fisheries operate as tenders for vessels fishing in State-managed herring and salmon fisheries. These tenders receive catch in Togiak Bay, Kulukak Bay, and other bays in northern Bristol Bay and deliver that catch to processing plants in Dillingham and other communities in Bristol Bay. Prior to 2012, some vessel owners also surrendered their FFPs to allow a vessel to transit through Walrus Protection Areas to deliver processed groundfish from fishing grounds in the Bering Sea to delivery locations in northern Bristol Bay.

Without an FFP, vessels can transit through Walrus Protection Areas and avoid the additional time, operating expenses, increased exposure to weather, and navigational challenges when operating in State waters compared to vessels that are designated on an FFP and are prohibited from entering Walrus Protection Areas. Section 1.3.2 of the Analysis describes the factors affecting vessels that are prohibited from transiting through Walrus Protection Areas. The following paragraphs summarize these factors.

On January 1, 2012, NMFS implemented Amendment 83 to the GOA FMP (76 FR 74670, December 1, 2011; corrected 76 FR 81872, December 29, 2011). Regulations implementing Amendment 83 to the GOA FMP (Amendment 83) limited the ability of vessel owners to easily surrender an FFP. An FFP is issued for 3 years under the FFP application process and is in effect from the effective date through the expiration date, unless it is revoked, suspended, surrendered (see regulations at § 679.4(b)(4)(i)). NMFS will not reissue a surrendered FFP with certain endorsements (see regulations at § 679.4(b)(4)(ii)); therefore, a vessel owner cannot surrender an FFP more than once in a 3-year period to transit the Walrus Protection Areas.

NMFS intended the regulations implementing Amendment 83 to allow the proper tracking and accounting of Federal fishery allocations. NMFS did not intend the regulations to specifically limit the ability of vessel owners to surrender FFPs to transit through Walrus Protection Areas when operating as tenders or delivering processed groundfish. However, the regulations implementing Amendment 83 require vessel owners to either surrender their FFPs to transit through Walrus Protection Areas when operating as tenders or delivering processed groundfish and be prohibited from deploying fishing gear in Federal waters for up to 3 years, or retain their FFPs and be prohibited from transiting through Walrus Protection Areas.

Vessel owners prefer to transit through the Walrus Protection Areas north of Round Island because transiting to the north and outside of Walrus Protection Areas requires vessels to transit through shallower waters in State waters. Transit through shallower waters can be more difficult to navigate and may create additional safety concerns. Transiting to the south of Round Island and outside of the Walrus Protection Areas requires vessels to transit around Round Island and through Hagemeister Strait. This route adds considerable distance and time to each transit, which increases fuel costs and potentially exposes vessels to more adverse weather conditions for a longer period of time. Transit through Hagemeister Strait also puts vessels in close proximity (i.e., within 3 nm) to a walrus haulout on the southern tip of Hagemeister Island. This vessel traffic may disturb walruses using the haulout on Hagemeister Island. An alternative route that would allow vessels designated on FFPs to transit through a portion of the Walrus Protection Areas north of Round Island could reduce vessel transits through Hagemeister Strait and the potential for disturbance to walruses using the haulout on Hagemeister Island.

Currently, vessels can transit through State waters (from 0 to 3 nm from the shore) near Cape Peirce while tendering herring or salmon from fishing locations near Cape Peirce, or when delivering groundfish in northern Bristol Bay. As noted in Section 3.2.7.3 of the Analysis, USFWS has not monitored walruses in the Cape Peirce area for disturbance and the incidence of disturbance at Cape Peirce is not known. However, vessels transiting through State waters (i.e., within 3 nm of Cape Peirce) may be more likely to disturb walruses. An alternative route that would allow vessels designated on FFPs to transit through a portion of the Walrus Protection Areas east of Cape Peirce could reduce vessel transits through State waters near Cape Peirce and the potential for disturbance to walruses using the haulout at Cape Peirce.

The Proposed Action

This proposed action would allow vessels designated on FFPs to enter and transit through specific areas of the Walrus Protection Areas near Round Island and Cape Peirce. These transit areas are shown in Figure 1 below.

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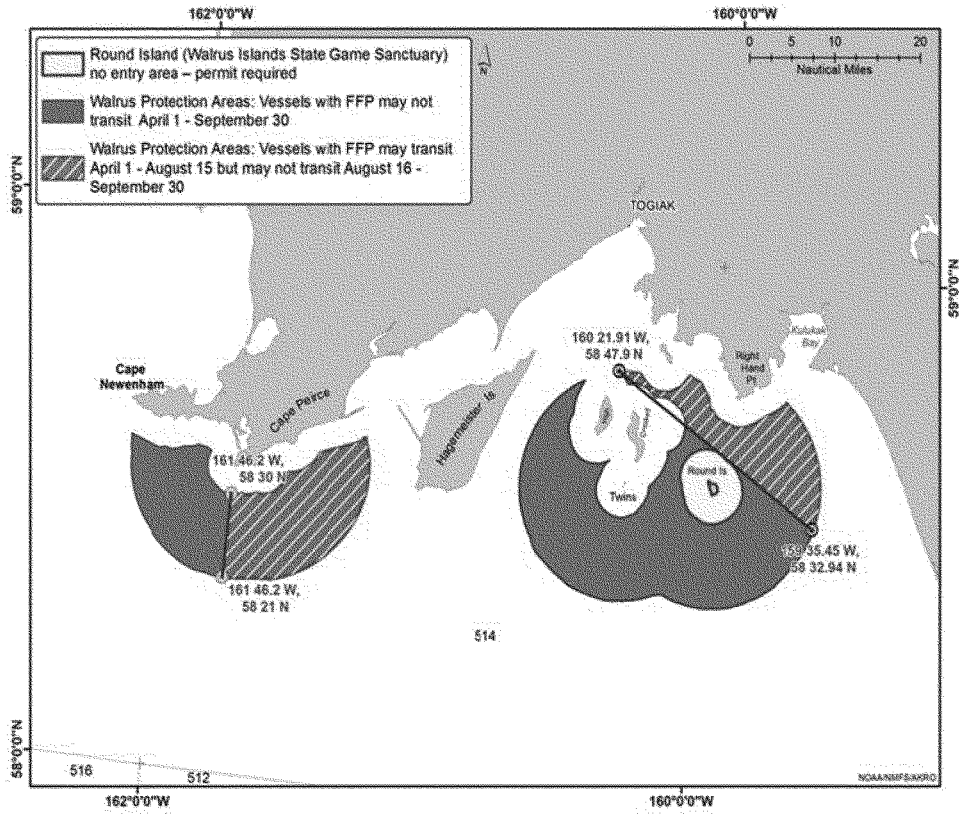
Figure 1. Proposed Transit Areas near Round Island and Cape Peirce



The Council recommended and NMFS proposes these transit areas based on information in Sections 3.7 and 4 of the Analysis indicating that allowing vessels designated on FFPs to transit areas near Round Island and Cape Peirce would: (1) Not increase potential disturbance of walruses on Round Island and Cape Peirce; (2) not be expected to increase vessel traffic through Walrus Protection Areas, particularly when compared to vessel traffic patterns prior to the implementation of Amendment 83; (3) restore the ability for vessels designated on an FFP that historically served as tenders for the northern Bristol Bay herring and salmon fisheries before implementation of Amendment 83 to transit through Walrus Protection Areas; (4) restore the ability of vessels designated on an FFP that delivered processed groundfish to northern Bristol Bay before implementation of Amendment 83 to transit through Walrus Protection Areas; and (5) reduce the potential for disturbance to walruses using haulouts on Hagemeister Island and Cape Peirce. The following sections describe proposed transit areas near Round Island and Cape Peirce and a proposed prohibition to vessels designated on FFPs from deploying fishing gear in Walrus Protection Areas.

Transit Area Near Round Island

This proposed action would add regulations at § 679.22(a)(4)(ii) to establish a transit area through the Walrus Protection Areas near Round Island. This proposed action would establish a transit area in the EEZ near Round Island from April 1 through August 15, annually, north of a line from 58°47.90′ N, 160°21.91′ W to 58°32.94′ N, 159°35.45′ W. (Please see Figure 1 of this preamble.)

This transit area is at least 3 nm from Round Island at its closest point and is more than 9 nm from the haulouts on The Twins at its closest point. As noted in Section 3.2.7.2.1 of the Analysis, there has been no recorded visible disturbance to walruses from vessel traffic more than 3 nm from Round Island, but disturbance from vessel traffic has been documented within 3 nm from Round Island. This proposed action would not allow vessels designated on an FFP to transit within 3 nm of Round Island or The Twins.

The Council recommended and NMFS proposes this transit area to maintain suitable protection for walruses on Round Island and to allow tenders and vessels delivering groundfish access to a transit route north of Round Island. NMFS expects this proposed transit area to reduce the potential for vessels to transit near Hagemeister Island, a known walrus haulout, because vessels would be allowed to transit north of Round Island and to avoid the route near Hagemeister Island. This proposed action would also allow vessels to transit through Federal waters further from shore and thereby reduce transit through shallower State waters that are more difficult to navigate.

The transit area near Round Island would open April 1 because this proposed action is intended to relieve the existing regulations that prohibit entry and transit to vessels designated on an FFP in Walrus Protection Areas on April 1, the start of peak walrus use in the area. This transit area would be closed after August 15 because of the following: (1) The herring and most salmon fisheries are completed by August 15, and tender vessels are no longer active and do not require transit through Walrus Protection Areas after that date; (2) vessels transiting to deliver groundfish in northern Bristol Bay typically have completed their deliveries by August 15 and do not require transit through Walrus

Protection Areas after that date; and (3) limiting vessel transit by August 15 would reduce vessel traffic near walrus haulouts that could interfere with vessels used for the subsistence harvest of walruses on Round Island beginning in September of each year. NMFS notes that vessels designated on FFPs would still be prohibited from entering and transiting through the Walrus Protection Areas near Round Island after August 15 through September 30. NMFS expects that this prohibition would not adversely affect vessels designated on FFPs because tendering operations and groundfish deliveries in northern Bristol Bay do not occur during the August 15 through September 30 time period.

Transit Area Near Cape Peirce

This proposed action would add regulations at § 679.22(a)(4)(ii) to establish transit areas through the Walrus Protection Areas at Cape Peirce. This proposed action would establish a transit area in the EEZ near Cape Peirce that would be open from April 1 through August 15, annually, east of a line from 58°30.00′ N, 161°46.20′ W to 58°21.00′ N, 161°46.20′ W. (Please see Figure 1 of this preamble.) This transit area is at least 3 nm from Cape Peirce at its closest point.

The Council recommended and NMFS proposes the transit area through the Walrus Protection Areas near Cape Peirce to provide an opportunity for vessels with FFPs to travel farther from shore while tendering herring or salmon and avoid transit through State waters near walrus haulouts at Cape Peirce. NMFS expects that the transit area will reduce the likelihood of disturbance to walruses at the Cape Peirce Walrus Protection Areas.

The transit area would be open from April 1 through August 15 consistent with the opening and closing dates established for the Round Island transit area. As noted in the previous section of this preamble, these dates would facilitate vessel transits for tendering and groundfish deliveries. NMFS notes that vessels designated on FFPs would still be prohibited from entering and transiting through the Walrus Protection Areas near Cape Peirce after August 15 through September 30. NMFS expects this prohibition would not adversely affect vessels designated on FFPs because tendering operations and groundfish deliveries in northern Bristol Bay do not occur during the August 16 through September 30 period.

Prohibition on Vessels with FFPs Deploying Fishing Gear in Walrus Protection Areas

This proposed action would add regulations at § 679.22(a)(4)(ii) to prohibit vessels designated on an FFP from deploying fishing gear in Walrus Protection Areas from April 1 through September 30 annually. As noted throughout this preamble, this proposed action is intended to remove a prohibition that limits vessels from entering and transiting through Walrus Protection Areas. This proposed action is not intended to allow vessels designated on FFPs to fish in Walrus Protection Areas from April 1 through September 30. Section 3.1 of the Analysis notes that this proposed action would not be expected to affect the timing, duration, effort, or harvest levels in the fisheries in northern Bristol Bay because this proposed action would not open Walrus Protection Areas to fishing by vessels designated on an FFP. Because vessels designated on FFPs are already prohibited from deploying fishing gear in Walrus Protection Areas, this proposed prohibition would maintain the status quo prohibition on deploying fishing gear in Walrus Protection Areas. Therefore, this proposed action would not affect any existing fishing operations.

Classification

Pursuant to section 304(b) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed action is consistent with the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed action has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

Regulatory Impact Review

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. An IRFA is required to include (a) a description of the reasons why action by the agency is being considered; (b) a succinct statement of the objectives of, and legal basis for, the proposed rule; (c) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (d) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule; (e) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule; and (f) a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the remainder of the IRFA follows. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

The entities that could be directly regulated by the proposed action are those businesses that tender herring or salmon from fisheries to delivery locations in northern Bristol Bay, and those businesses that deliver processed groundfish from the Bering Sea to locations in northern Bristol Bay. Vessels tendering herring or salmon are transporting harvested fish. Because tender vessel operators enter into private contracts with herring and salmon fishing vessel operators to transport their catch, revenue information from tenders is not available. Based on information from 2012, the most recent year of complete data, a maximum of 64 vessels were estimated to have operated as tenders in the herring and salmon fisheries in northern Bristol Bay. These vessels could have been designated on an FFP and could be affected by this proposed action. Because no revenue information is available on these vessels each of these vessels were assumed to be a small entity.

Based on information from 2012, the most recent year of complete data, a maximum of 6 vessels were estimated to have delivered processed groundfish to locations in northern Bristol Bay. These vessels could have been designated on FFP and could be affected by this proposed action. All of these vessels were affiliated through common management under cooperative fishing arrangements. These affiliated vessels had ex-vessel annual revenues in 2012 that exceeded the annual revenue limit of $20.5 million used by the Small Business Administration to define a small entity harvesting or processing

groundfish (79 FR 33647, June 12, 2014). Therefore these vessels are considered to be large entities.

None of the alternatives would modify existing reporting, recordkeeping, or other compliance requirements. No duplication, overlap, or conflict between this proposed action and existing Federal rules has been identified.

An IRFA requires a description of any significant alternatives to the proposed alternative that accomplish the stated objectives, are consistent with applicable statutes, and that would minimize any significant economic impact of the proposed action on small entities. The IRFA considered three alternatives. Alternative 1, the no action (status quo) alternative, would maintain the existing closures between 3 and 12 nm around Round Island and Cape Peirce, and would not allow vessels designated on an FFP to transit these areas. Therefore, Alternative 1 represents the most restrictive alternative considered and the alternative with the highest potential cost to regulated small entities.

Alternative 2 would establish a transit area through the existing Walrus Protection Areas near Round Island. Alternative 2 also included three options, Options 1, 2 and 3 to allow the closest point of the transit area to be within 3 nm, 4.5 nm, and 6 nm from Round Island, respectively. Alternative 3 would establish a transit area through Walrus Protection Areas near Cape Peirce.

The alternatives analyzed but not selected are Alternative 1 (status quo, do not allow transit through the protection areas) and Alternative 2, Options 2 and 3. All of these alternatives and options are more restrictive than the proposed action. The proposed action is Alternative 2, Option 1 and Alternative 3. Alternative 2, Option 1 allows vessels to transit closer to Round Island than Alternative 2, Option 2 and Alternative 2, Option 3. Therefore, Alternative 2, Option 1 is the least restrictive of the three options under Alternative 2. Alternative 3 provides a seasonal transit area around Cape Peirce. This proposed action represents the alternatives that minimize the potential cost to directly regulated small entities. The boundaries farther from Round Island (Options 2 and 3) may incrementally reduce the potential for disturbance to walruses on Round Island (see Section 3.2.7 of the Analysis), but are not likely to significantly affect the distances traveled as vessels with FFPs transit the protected area. The differences in transit time or fuel costs are not likely to be significantly different between these options. As noted in Section 3.2.7.2.1 of the Analysis, there has been no recorded visible disturbance to walruses from vessel traffic more than 3 nm from Round Island.

The Council also considered rescinding the protection areas around Round Island and Cape Peirce for all or a portion of the year, eliminating the barriers to transiting the Walrus Protection Areas. Rescission of the protection areas would reduce costs to regulated small entities more than the proposed action. However, these alternatives were not analyzed because they do not meet the purpose and need of the proposed action to maintain protection of walruses in these important haulout sites.

Tribal Consultation

Executive Order (E.O.) 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995), and the Department of Commerce Tribal Consultation and Coordination policy (78 FR 33331, June 4, 2013) outline the responsibilities of NMFS for Federal policies that have tribal implications. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 109–447 (118 Stat. 3267), extends the consultation requirements of E.O. 13175 to Alaska Native corporations. Under the E.O. and agency policies, NMFS must ensure meaningful and timely input by tribal officials and representatives of Alaska Native corporations in the development of regulatory policies that have tribal implications. NMFS will provide a copy of this proposed rule to the federally recognized tribes and Alaska Native corporations in the Bristol Bay area to notify them of the opportunity to comment or request a consultation on this proposed action.

Section 5(b)(2)(B) of E.O. 13175 requires NMFS to prepare a ''tribal summary impact statement'' for any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and is not required by statute. The tribal summary impact statement must contain (1) a description of the extent of the agency's prior consultation with tribal officials, (2) a summary of the nature of their concerns, (3) the agency's position supporting the need to issue the regulation, and (4) a statement of the extent to which the concerns of tribal officials have been met. If the Secretary of Commerce approves this proposed action, a tribal impact summary statement that addresses the four questions above will be included in the final rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries.

Dated: September 30, 2014.

Samuel D. Rauch III,

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

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

■ 2. In § 679.22, revise paragraph (a)(4) to read as follows:

§ 679.22 Closures.

(a) * * *

(4) *Walrus protection areas.*

(i) From April 1 through September 30 of each calendar year, vessels designated on a Federal fisheries permit issued under § 679.4 are prohibited from deploying fishing gear in that part of the Bering Sea subarea between 3 and 12 nm seaward of the baseline used to measure the territorial sea around islands named Round Island and The Twins, as shown on National Ocean Survey Chart 16315, and around Cape Peirce (58°33′ N. lat., 161°43′ W. long.).

(ii) From April 1 through September 30 of each calendar year, vessels designated on a Federal fisheries permit issued under § 679.4 are prohibited in that part of the Bering Sea subarea between 3 and 12 nm seaward of the baseline used to measure the territorial sea around islands named Round Island and The Twins, as shown on National Ocean Survey Chart 16315, and around Cape Peirce (58°33′ N. lat., 161°43′ W. long.), except that from April 1 through August 15 of each calendar year vessels designated on a Federal fisheries permit are not prohibited from entering and transiting through waters off:

(A) Round Island, north of a straight line connecting 58°47.90′ N. lat./160°21.91′ W. long., and 58°32.94′ N. lat./159°35.45′ W. long.; and

(B) Cape Peirce, east of a straight line connecting 58°30.00′ N. lat./161°46.20′ W. long., and 58°21.00′ N. lat./161°46.20′ W. long.

* * * * *

[FR Doc. 2014–23635 Filed 10–2–14; 8:45 am]

BILLING CODE 3510–22–C

Notices

Federal Register
Vol. 79, No. 192
Friday, October 3, 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.

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Senior Executive Service; Membership of Performance Review Board

ACTION: Notice.

SUMMARY: This notice lists approved candidates who will comprise a standing roster for service on the Agency's 2014 and 2015 SES Performance Review Boards. The Agency will use this roster to select SES board members, and an outside member for the convening SES Performance Review Board each year. The standing roster is as follows:

Allen, Colleen
Broderick, Deborah
Cappozola, Christa
Chan, Carol
Crumbly, Angelique
Detherage, Maria Price
Feinstein, Barbara
Foley, Jason
Jenkins, Robert
Kolmstetter, Elizabeth
Kramer, Douglas
Kuyumjian, Kent
Leavitt, William
Martin-Wallace, Valencia, Outside SES Member
McNerney, Angela
Mitchell, Reginald
Miranda, Roberto
Pascocello, Susan
Peters, James
Romanowski, Alina
Sampler, Donald
Schmipp, Michele
Vera, Mauricio
Walther, Mark
Warren, Wade
Webb, Mark
White, Christa

FOR FURTHER INFORMATION CONTACT: Marvol Edmonds, 202–712–1781.

Dated: September 29, 2014.

Vanessa D. Prout,

Division Chief, Employee Labor Relations Division.

[FR Doc. 2014–23593 Filed 10–2–14; 8:45 am]

BILLING CODE 6116–02–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

2014 Farm Bill Implementation Listening Session—Rural Community College Coordinated Strategy

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, USDA.

ACTION: Notice, Correction.

SUMMARY: On September 25, 2014, Rural Development published a notice concerning the 2014 Farm Bill Implementation Listening Session—Rural Community College Coordinated Strategy. The phone number for the conference was incorrectly stated in one location.

DATES: Effective on Thursday, September 25, 2014.

FOR FURTHER INFORMATION CONTACT: Dexter Pearson, 202–401–9790, Email: *dexter.pearson@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

Correction

In the **Federal Register** of September 25, 2014, FR Doc. #2014–22827 on page 57505 in the second column, correct phone number should read:

Dial 1–888–469–0566 and enter Conference ID: 3499699.

Dated: September 26, 2014.

Doug O'Brien,

Acting Under Secretary, Rural Development.

[FR Doc. 2014–23577 Filed 10–2–14; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 29, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 3, 2014 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Importation of Plants for Planting; Establishing a Category for Plants for Planting Not Authorized for Importation Pending Pest Risk Analysis.

OMB Control Number: 0579–0380.

Summary Of Collection: The United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), is responsible for preventing the entry of plant diseases or insect pests from entering into the United States, preventing the spread of pests and noxious weeds not widely distributed into the United States, and eradicating those imported pests when eradication is feasible. Under the Plant Protection Act (7 U.S.C. 7701—*et seq.*), the Secretary of Agriculture is authorized to take such actions as may be necessary to prevent the introduction and spread of plant pests and noxious weeds within the United States. APHIS amended the regulations to establish a new category of regulated articles in the regulations governing the importation of nursery stock, also known as plants for planting. This category will list taxa for plants for planting whose importation is not authorized pending pest risk analysis.

Need And Use of the Information: APHIS will collect the following information before a Pest Risk Assessment can be prepared: (1) a description and/or map of the specific locations(s) of the areas in the exporting country where the plant, plant parts,, or plant products are produced; (2) Scientific name (including genus, species, and author names) and taxonomic classification of arthropods, fungi, bacteria, nematodes, viruses, viroids, mollusks, phytoplasmas, spiroplasmas, etc., attacking the crop; and (3) Plant part attacked by each pest, pest life stages associated with plant part attacked, and location of pest (in, on, or with commodity).

Description of Respondents: Business or other for-profits; Federal Government.

Number of Respondents: 5.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 28.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–23525 Filed 10–2–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Meeting of Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis, Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409, Pub. L. 96–523, Pub. L. 97–375 and Pub. L. 105–153), we are announcing a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting will address ways in which the national economic accounts can be presented more effectively for current economic analysis and recent statistical developments in national accounting.

DATES: Friday, November 14, the meeting will begin at 9:00 a.m. and adjourn at 3:30 p.m.

ADDRESSES: The meeting will take place at the Bureau of Economic Analysis at 1441 L St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gianna Marrone, Program Analyst, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; telephone number: (202) 606–9633.

Public Participation: This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact Gianna Marrone of BEA at (202) 606–9633 in advance. The meeting is physically accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to Gianna Marrone at (202) 606–9633.

SUPPLEMENTARY INFORMATION: The Committee was established September 2, 1999. The Committee advises the Director of BEA on matters related to the development and improvement of BEA's national, regional, industry, and international economic accounts, especially in areas of new and rapidly growing economic activities arising from innovative and advancing technologies, and provides recommendations from the perspectives of the economics profession, business, and government. This will be the Committee's twenty-seventh meeting.

Dated: August 12, 2014.

Brian C. Moyer,

Deputy Director, Bureau of Economic Analysis.

[FR Doc. 2014–23424 Filed 10–2–14; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–107–2014]

Approval of Subzone Status; Southern Motion, Inc.; Pontotoc and Baldwyn, Mississippi

On August 7, 2014, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Greater Mississippi Foreign-Trade Zone, Inc., grantee of FTZ 158, requesting subzone status subject to the existing activation limit of FTZ 158 on behalf of Southern Motion, Inc., in Pontotoc and Baldwyn, Mississippi.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (79 FR 47436, August 13, 2014). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 158G is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 158's 2,000-acre activation limit.

Dated: September 30, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–23665 Filed 10–2–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–857, A–580–870, A–583–850, A–489–816, A–552–817]

Certain Oil Country Tubular Goods From India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Notice of Correction to the Antidumping Duty Orders With Respect to Turkey and the Socialist Republic of Vietnam

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* October 3, 2014.

FOR FURTHER INFORMATION CONTACT: Emily Halle at (202) 482–0176 (India); Victoria Cho at (202) 482–5075 or Deborah Scott at (202) 482–2657 (Korea); Thomas Schauer at (202) 482–0410 (Taiwan); Catherine Cartsos at (202) 482–1757 (Turkey); or Fred Baker at (202) 482–2924 or Davina Friedmann at (202) 482–0698 (Vietnam), 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: On September 10, 2014, the Department of Commerce (the Department) published the antidumping duty orders on certain oil country tubular goods (OCTG) from India, the Republic of Korea (Korea), Taiwan, the Republic of Turkey (Turkey), and the Socialist Republic of Vietnam (Vietnam).[1] Footnote 1 of the *Orders* contains a list of the **Federal Register** citations for the Department's affirmative final determinations of sales at less than fair value (LTFV) in the investigations of OCTG from India, Korea, Taiwan, Turkey, and Vietnam. Incorrect page numbers were cited for the final determinations of sales at LTFV in the investigations of OCTG from Turkey and Vietnam. This notice provides the citations for these two notices with the correct page numbers. The correct citations are: *Certain Oil Country Tubular Goods From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, in Part,* 79 FR 41971 (July 18, 2014) and *Certain Oil Country Tubular Goods From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 79 FR 41973 (July 18, 2014).

This notice serves as a correction and is published in accordance with section 777(i) of the Tariff Act of 1930 as amended.

Dated: September 25, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–23666 Filed 10–2–14; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Oil Country Tubular Goods From India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods From the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 53691 (September 10, 2014) (*Orders*).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Summer High School Intern Program (SHIP)

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 2, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jeremy Lawson, Civil Rights and Diversity Office, NIST, 100 Bureau Dr., Mail Stop 1080, Gaithersburg, MD 20899–1080; 301–975–5481; *jeremy.lawson@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Summer High School Intern Program (SHIP) is a NIST-wide 8-week summer intern program for students who will have finished their junior or senior year of high school by the start of the program, are U.S. citizens, and are interested in scientific research. Students selected for this competitive volunteer program will participate in cutting-edge research at NIST, and will work closely with NIST staff scientists and engineers on a specific research problem.

The first round of the application process is completed via an on-line application through the Student Information System which collects basic biographical information about the student. This information is reviewed and finalists are invited to submit secondary materials via email to *ship@nist.gov.* These secondary materials include a resume, transcript, letters of recommendation, personal statement, and parental consent and commitment form.

II. Method of Collection

The initial application is via NIST's on-line Student Information System. The finalist application is via email to *ship@nist.gov.*

III. Data

OMB Control Number: 0693–XXXX.

Form Number(s): None.

Type of Review: Regular submission (new collection).

Affected Public: Individuals or households; Local government (public schools).

Estimated Number of Respondents: 350.

Estimated Time per Response: 8 hours.

Estimated Total Annual Burden Hours: 2,800.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 30, 2014

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–23610 Filed 10–2–14; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD524

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, National Oceanic and

Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Subcommittee of the Scientific and Statistical Committee (SSC) will hold a joint methodology review meeting with the Salmon Technical Team (STT) and Model Evaluation Workgroup (MEW), followed by a single-day meeting of the STT, all of which will be open to the public.

DATES: The joint methodology review meeting will be held Tuesday, October 21, from 1 p.m. to 5 p.m., Wednesday, October 22, 2014, from 9 a.m. to 5 p.m., and Thursday, October 23, 2014, from 9 a.m. to noon, or until business is completed. The STT will continue with a one-day meeting on Friday, October 24, 2014, from 9 a.m. to 5 p.m.

ADDRESSES: Both meetings will be held at the Sheraton Portland Airport Hotel, 8235 NE Airport Way, Portland OR 97220; telephone: (503) 281–2500. The methodology review meeting will be in the St. Helens D Room and the STT meeting will be in the Garden C Room.

Council address: Pacific Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, Pacific Council; telephone: (503) 820–2414.

SUPPLEMENTARY INFORMATION: The purpose of the methodology review meeting is to discuss and review proposed changes to analytical methods used in salmon management. Recommendations from the methodology review meeting will be presented at the November 14–19, 2014 Council meeting in Costa Mesa, CA where the Council is scheduled to take final action on the proposals. Final methodology review topics were adopted by the Council at their September 12–17, 2014 meeting in Spokane, WA and are posted on the Pacific Council's Web page (*www.pcouncil.org*). The STT will hold a 1-day session following the methodology review to discuss items on the Council's November 2014 meeting agenda. Major topics include: The salmon methodology review, the Lower Columbia River coho harvest matrix, and the preseason salmon management schedule, process, and documentation for 2015.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document 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 intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2425 at least 5 days prior to the meeting date.

Dated: September 30, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–23617 Filed 10–2–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD529

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Monday, October 20, 2014 at 8:30 a.m.

ADDRESSES: The meeting will be held at the DoubleTree by Hilton, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500; fax: (978) 750–7991.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda items:

The New England Fishery Management Council's SSC will meet to: Review stock assessment information, consider information provided by the Groundfish PDT and continue to develop acceptable biological catch (ABC) recommendations and other scientific advice for Gulf of Maine cod for fishing years 2015–17; review stock assessment information, consider information provided by the Groundfish PDT and develop overfishing levels (OFLs) and ABC recommendations for Georges Bank winter flounder, Gulf of Maine winter flounder and pollock for fishing years 2015–17. The committee may not complete all the ABC recommendations for these stocks at this meeting. They will also discuss the format of operational stock assessment reports. The committee will address other business as necessary.

Although non-emergency issues not contained in this agenda may be discussed, 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

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: September 29, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–23542 Filed 10–2–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD518

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold meetings of its 117th Scientific and Statistical Committee (SSC) and its 161st Council meeting to take actions on

fishery management issues in the Western Pacific Region. The Council will also convene meetings of the Council's Education Steering Committee, Fishery Data Collection and Research Committee, Pelagic Standing Committee, and Executive and Budget Standing Committee.

DATES: The meetings will be held Monday, October 13, 2014 through Thursday, October 23, 2014. For specific dates, times and agendas, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The Education Steering Committee, 117th SSC, the Fishery Data Collection and Research Committee and Standing Committee meetings will be held at the Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813; telephone: (808) 522–8220. The 161st Council meeting will be held at the Laniakea YWCA-Fuller Hall, 1040 Richards Street, Honolulu, HI 96813; telephone: (808) 538–7061.

The Fishers Forum will be held at the Harbor View Center, Pier 38, 1129 North Nimitz Highway, Honolulu, HI 96817; telephone: (808) 983–1200.

Background documents will be available from, and written comments should be sent to, Mr. Edwin Ebisui, Acting Chair, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, telephone: (808) 522–8220 or fax: (808) 522–8226.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The Education Steering Committee will meet on October 13, 2014, between 3 p.m. and 5 p.m.; 117th SSC meeting on October 14–16, 2014, between 8:30 a.m. and 5 p.m.; Fishery Data Collection and Research Committee October 20, 2014, between 10 a.m. and 12 noon; the Council's Pelagics and International Standing Committee on October 20, 2014, between 1 p.m. and 3 p.m. and Executive and Budget Standing Committee October 20, between 3 p.m. and 5 p.m.; the 161st Council meeting will be held between 8:30 a.m. and 5 p.m. on October 21–23, 2014. In addition, the Council will host a Fishers Forum on October 21, 2014, between 6 p.m. and 9 p.m.

In addition to the agenda items listed here, the SSC and Council will hear recommendations from Council advisory groups. Public comment periods will be provided throughout the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for the Education Steering Committee

3 p.m.–5 p.m., Monday, October 13, 2014

1. Scholarship Program
2. Internships
3. Educational Resources
4. Public Comment
5. Discussion and Recommendations

Schedule and Agenda for 117th SSC Meeting

8:30 a.m.–5 p.m., Tuesday, October 14, 2014

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 116th SSC Meeting Recommendations
4. Report from the National Marine Fisheries Service (NMFS) Pacific Islands Fisheries Science Center Director
5. Report from NMFS Office of Science & Technology
6. Insular Fisheries
   - A. NMFS Pacific Islands Fisheries Science Center's Response to SSC Comments on 2014 Main Hawaiian Islands (MHI) Deep 7 Bottomfish Stock Assessment
   - B. Report on SSC Subgroup Regarding 2014 MHI Deep 7 Bottomfish Stock Assessment
   - C. Public Comment
   - D. SSC Discussion and Recommendations
7. Program Planning
   - A. Specifying Acceptable Biological Catches (ABCs) for the American Samoa, Guam and CNMI Bottomfish (Action Item)
   - B. Report on the Center for Independent Experts (CIE) Review on the Biomass Augmented Catch-Maximum Sustainable Yield (BAC–MSY) Model
   - C. Reconsideration of ABC Recommendations for Coral Reef Fish, Crustacean, MHI Deep 7 and Non-Deep 7 Bottomfish (Action Item)
   - D. Discussion to Develop Agenda for the Fifth National SSC Meeting on Uncertainties in ABC Specifications for Data-limited Stocks
   - E. Marine Planning and Climate Change Committee
   - F. Public Comment
   - G. SSC Discussion and Recommendations

8:30 a.m.–5 p.m., Wednesday, October 15, 2014

8. Pelagic Fisheries
   - A. Fishery Ecosystem Plan (FEP) Amendment for Regional Fishery Management Organization (RFMO) Measures
     1. Development of a Framework Process to Implement RFMO Conservation and Management Measures under the Pelagic FEP
     2. Draft Proposed Regulations to Address Overfishing and Overfished Status of Western Central Pacific Ocean North Pacific (WCPO NP) Striped Marlin (Action Item)
   - B. Bigeye Stock Status (Action Item)
   - C. Hawaii Yellowfin and Bigeye Commercial Minimum Size Limit (Action Item)
   - D. Report on Disproportionate Burden Workshop
   - E. 2014 El Niño Update
   - F. International Fisheries
     1. Western and Central Pacific Fisheries Commission (WCPFC) Science Committee
     2. WCPFC Northern Committee
     3. WCPFC Technical and Compliance Committee
     4. US Permanent Advisory Committee
   - G. Ocean Legacy
   - H. Public Comment
   - I. SSC Discussion and Recommendations
9. Protected Species
   - A. Report on the Hawaii Deep-set Longline Biological Opinion (BiOp)
   - B. Draft 2014 Marine Mammal Stock Assessment Reports
   - C. Preliminary Summary of the Molokai Cetacean Survey
   - D. Independent Advisory Team for Marine Mammal Assessments
   - E. Updates on Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) Actions
     1. Final Determination to List Corals under the ESA
     2. Final Determination to List Scalloped Hammerhead Shark under the ESA
     3. 90-day Finding on a Petition to List Seven Species of Pomacentrid Reef Fish under the ESA
     4. Green Turtle Status Review
     5. North Pacific Humpback Whale Status Review
     6. Update on the False Killer Whale Take Reduction Plan Implementation
     7. Proposed 2015 List of Fisheries
     8. Other Relevant Actions
   - F. Public Comment
   - G. SSC Discussion and Recommendations

8:30 a.m.–12 noon, Thursday, October 16, 2014

10. Other Business
    - A. 118th SSC Meeting
11. Summary of SSC Recommendations to the Council

Fishery Data Collection and Research Committee

10 a.m.–12 noon, Monday, October 20, 2014

1. Welcome Remarks
2. Introductions
3. Update on Progress on Data Collection Projects
4. Review of the Strategic Plan Changes
5. Endorsement and Signing of the Strategic Plan
6. Revisiting Data Sharing Agreements
7. Planning for the Next Steps
8. Public Comment
9. Discussions and Recommendations

Schedule for Council Standing Committee Meetings

1 p.m.–3 p.m., Monday, October 20, 2014

Pelagic and International Standing Committee

3 p.m.–5 p.m., Monday, October 20, 2014

Executive and Budget Standing Committee

Schedule and Agenda for 161st Council Meeting

8:30 a.m.–5 p.m., Tuesday, October 21, 2014

1. Welcome and Introductions
   - A. Swearing In of New and Reappointed Members
2. Approval of the 161st Agenda
3. Approval of the 160th Meeting Minutes
4. Executive Director's Report
5. Presentation on State of Ecosystem
6. Agency Reports
   - A. NMFS
   - 1. Pacific Islands Regional Office
   - 2. Pacific Islands Fisheries Science Center
   - B. NOAA Office of General Counsel, Pacific Islands Section
   - C. U.S. Fish and Wildlife Service
   - D. Enforcement
   - 1. U.S. Coast Guard
   - 2. NOAA Office of Law Enforcement
   - 3. NOAA Office of General Counsel, Enforcement Section
   - E. Public Comment
   - F. Council Discussion and Action
7. Program Planning and Research
   - A. Specifying Annual Catch Limits for American Samoa, Guam, CNMI Bottomfish (Action Item)
   - B. Report on CIE Review of BAC–MSY Model (Action Item)
   - C. Reconsideration of ACL Recommendation and Accountability Measures for Coral Reef Fish, Crustaceans and MHI Non-deep 7 Bottomfish (Action Item)
   - D. Regional Electronic Technologies Implementation Plan
   - E. Western Pacific Stock Assessment Review Process and Policy
   - F. Regional, National and International Outreach & Education
   - G. Advisory Group Reports and Recommendations
   - 1. Fishery Data Collection and Research Committee
   - 2. Marine Planning and Climate Change Committee
   - 3. Education Steering Committee
   - H. SSC Recommendations
   - I. Public Hearing
   - J. Council Discussion and Action

Fishers Forum Harbor View Center 6 p.m.–9 p.m.

Hawaii Yellowfin and Striped Marlin Management

8:30 a.m.–5 p.m., Wednesday, October 22, 2014

8. American Samoa Archipelago
   - A. Motu Lipoti
   - B. Fono Report
   - C. Enforcement Issues
   - D. Community Activities and Issues
   - E. Education and Outreach Initiatives
   - F. American Samoa National Marine Sanctuary
   - G. Rose Atoll Marine National Monument
   - H. SSC Recommendations
   - I. Public Comment
   - J. Council Discussion and Action
9. Hawaii Archipelago
   - A. Moku Pepa
   - B. Legislative Report
   - C. Enforcement
   - D. Main Hawaiian Islands Bottomfish
   - 1. PIFSC Response to SSC Comments on MHI Deep 7 Bottomfish Stock Assessment
   - 2. Report on SSC Subgroup Regarding 2014 MHI Deep 7 Stock Assessment
   - 3. Reconsideration of MHI Deep 7 ACL Specification (Action Item)
   - 4. State of Hawaii BRFA Management Plan
   - 5. Regulatory Changes Establishing a Market Delay for the Sale and Removal of Non-commercial Bag Limits for MHI Bottomfish (Action Item)
   - E. Community Projects, Activities and Issues
   - 1. Report on Puwalu
   - 2. Council Marine Science Summer Class
   - 3. Outreach and Education Report
   - F. Hawaiian Islands Humpback Whale National Marine Sanctuary
   - G. SSC Recommendations
   - H. Public Hearing
   - I. Council Discussion and Action
10. Protected Species
   - A. Report on the Hawaii Deep-set Longline Biological Opinion
   - B. Draft 2014 Marine Mammal Stock Assessment Reports
   - C. Updates on Endangered Species Act and Marine Mammal Protection Act Actions
   - 1. Final Determination to List Corals under the ESA
   - 2. Final Determination to List Scalloped Hammerhead Shark under the ESA
   - 3. 90-day Finding on a Petition to List Seven Species of Pomacentrid Reef Fish under the ESA
   - 4. Green Turtle Status Review
   - 5. North Pacific Humpback Whale Status Review
   - 6. Update on the False Killer Whale Take Reduction Plan Implementation
   - 7. Proposed 2015 List of Fisheries
   - 8. Other Relevant Actions
   - D. SSC Recommendations
   - E. Public Comment
   - F. Council Discussion and Action
11. Public Comment on Non-agenda Items

8:30 a.m. to 5 p.m., Thursday October 23, 2014

12. Mariana Archipelago
   - A. Guam
   - 1. Isla Informe
   - 2. Legislative Report
   - 3. Enforcement Issues
   - 4. Community Activities and Issues
   - B. Commonwealth of Northern Mariana Islands
   - 1. Arongol Falú
   - 2. Legislative Report
   - 3. Enforcement Issues
   - 4. Community Activities and Issues
   - C. Marianas Trench Marine National Monument: Islands, Volcanic, and Trench Units
   - D. SSC Recommendations
   - E. Public Hearing
   - F. Council Discussion and Action
13. Pelagic & International Fisheries
   - A. FEP Amendment for RFMO Measures
   - 1. Development of a Framework Process to Implement RFMO Conservation and Management Measures under the Pelagic FEP
   - 2. Draft Proposed Regulations to Address Overfishing and Overfished Status of WCPO NP Striped Marlin (Action Item)
   - B. Bigeye Stock Status (Action Item)
   - C. Hawaii Yellowfin and Bigeye Commercial Minimum Size Limit (Action Item)
   - D. American Samoa Exclusive Economic Zone Albacore Catch Limit (Action Item)
   - E. Report on Disproportionate Burden Workshop
   - F. International Fisheries

1. WCPFC Science Committee
2. WCPFC Northern Committee
3. WCPFC Technical and Compliance Committee
4. US Permanent Advisory Committee

G. Proposed Expansion of the Pacific Remote Islands Marine National Monument (Action Item)
1. Changes to Monument Boundaries
2. Council Action

H. SSC Recommendations

I. Standing Committee Recommendations

J. Public Hearing

K. Council Discussion and Recommendations

14. Administrative Matters

A. Council Member and Staff Ethics Training

B. Financial Reports

C. Administrative Reports

D. Council Family Changes
1. Advisory Panel Appointments

E. Meetings and Workshops

F. Report on Operational Guidelines Workshop

G. Report on MSA Reauthorization

H. Other Business

I. Standing Committee Recommendations

J. Public Comment

K. Council Discussion and Action

15. Election of Officers

16. Other Business

Non-Emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 161st meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: September 30, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–23602 Filed 10–2–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD525

Gulf of Mexico Fishery Management Council (Council); Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold meetings of the: Joint Law Enforcement Committee, Gulf Council's Law Enforcement Advisory Panel Committee, and Gulf States Law Enforcement Committee, Red Drum Management Committee, Joint Administrative Policy and Budget/Personnel Committees, Data Collection Management Committee, Gulf SEDAR Committee, Reef Fish Committee, Mackerel Committee, and Shrimp Management Committee; in conjunction with a meeting of the Full Council. The Council will also hold a formal public comment session.

DATES: The Council meeting will convene 8:30 a.m. on Monday, October 20 until 5:30 p.m. on Thursday, October 23, 2014.

ADDRESSES: *Meeting address:* The meeting will be held at The Battle House Renaissance Mobile Hotel and Spa, located at 26 North Royal Street, Mobile, AL 36602; telephone: (251) 338–2000.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Gregory, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630; fax: (813) 348–1711; email: *doug.gregory@gulfcouncil.org.*

SUPPLEMENTARY INFORMATION: The items of discussion for each individual management committee agenda are as follows:

Joint Meeting of the Gulf Council's Law Enforcement Administrative Committee (Council), Law Enforcement Advisory Panel, and Gulf States Law Enforcement Committee Agenda, Monday, October 20, 2014, 8:30 a.m. until 11 a.m.

- Usefulness of Charter-for-hire Decals
- Review of Draft Definition of Charter Fishing
- Port Eads, Louisiana Marina Access
- Overview of Office of Law Enforcement (OLE) Gulf Restructuring
- Review of 2015–2016 Cooperative Enforcement Operations Plan
- State Report Highlights

Red Drum Management Committee Agenda, Monday, October 20, 2014, 11 a.m. until 11:30 a.m.

- Scoping Document for Recreational Red Drum Management and Update From Special Red Drum Working Group

– Recess –

Joint Meeting of the Administrative Policy and Budget/Personnel Committees Agenda, Monday, October 20, 2014, 1 p.m. until 3 p.m.

- Review of 2010–2014 Expenditures and Budget Carryover to 2015
- Review and Discussion of Potential Contractual Projects
- Update on Advisory Panels (AP) and Scientific and Statistical Committees (SSC) Appointment Process and Structure
- Discussion of SSC Conflict of Interest Policy
- Continued Review of Draft Statement of Organization Practices and Procedures (SOPPs) Revisions

Data Collection Administrative Committee Agenda, Monday, October 20, 2014, 3 p.m. until 4:30 p.m.

- Calibration Workshop Summary Report
- Discussion of South Atlantic Council Recommendations for Electronic Charter Boat Reporting
- Discussion of Species Reporting Requirements Under the Joint Electronic Dealer Reporting Amendment
- Discussion of Strategies to Improve Private Recreational Data Collection and Management

Gulf SEDAR Committee Agenda, Monday, October 20, 2014, 4:30 p.m. until 5:30 p.m.

- SEDAR 38—Gulf of Mexico and South Atlantic King Mackerel
- SEDAR Steering Committee Update
- SEDAR Schedule Review
- Updated List of Fishery Research and Socio-economic Priorities for 2015–2019

– Recess –

Reef Fish Management Committee Agenda, Tuesday, October 21, 2014, 8:30 a.m.–11:30 a.m. & 1 p.m.–5:30 p.m.

- Estimates of Red Snapper Abundance on Alabama's Offshore Reefs
- Amendment 39—Red Snapper Regional Management

• Final Action—Amendment 40—Recreational Red Snapper Sector Separation
• Individual Fishing Quota (IFQ) Program Review
• Gag Overfishing Limit (OFL) and Acceptable Biological Catch (ABC)
• Final Action—Red Grouper Bag Limit and Accountability Measures Framework Action
• Hogfish Benchmark Assessment Overfishing Limit (OFL) and Acceptable Biological Catch (ABC)
• Greater Amberjack Annual Catch Limit (ACL)/Annual Catch Target (ACT) Options Paper
• Amendment 28—Red Snapper Allocation
• Southeast Fisheries Science Center (SEFSC) Comments on *Red Snapper* Abundance Graph
– Recess –

Mackerel Management Committee Agenda, Wednesday, October 22, 2014, 8:30 a.m. until 9:30 a.m.

• Final Action—Framework Amendment 2 to the Coastal Migratory Pelagics Fishery Management Plan (FMP) for Atlantic Migratory Group Spanish Mackerel Trip Limits
• Other Business—King Mackerel Gill Net Concerns

Shrimp Management Committee Agenda, Wednesday, October 22, 2014, 9:30 a.m.–11 a.m.

• Final Action—Shrimp Amendment 15—Status Determination Criteria for Penaeid Shrimp and Adjustments to the Shrimp Framework Procedure
• Final Action—Shrimp Amendment 16—Adjustments to the Annual Catch Limit and Accountability Measures for Royal Red Shrimp
• Shrimp Amendment 17—Scoping Document of the Shrimp Permit Moratorium
• 2013 Shrimp Effort and Shrimp Electronic Logbook (ELB) Program Update

Council Session Agenda, Wednesday, October 22, 2014, 11 a.m. until 7:30 p.m.

11 a.m.–11:10 a.m.: Call to Order and Introductions, Adoption of Agenda, and Approval of Minutes

11:10 a.m.–11:15 a.m.: Approval of 2015 Committee Appointments

11:15 a.m.–2:30 p.m.: The Council will receive presentations on the Proposed Rule Update for the Aquaculture Fishery Management Plan (FMP), Evaluation of the Status of Kemp's Ridley Sea Turtle Following the 2010 Deepwater Horizon Spill using a Revised Assessment Model, Update on Red Snapper Federal Violations.

2:30 p.m.–5 p.m.: The Council will receive public testimony on Final Action on Reef Fish Amendment 40—Sector Separation, Final Action on Shrimp Amendment 15—Status Determination Criteria for Penaeid Shrimp and Adjustments to the Shrimp Framework Procedure, Final Action on Shrimp Amendment 16—Adjustments to the Annual Catch Limit and Accountability Measures for Royal Red Shrimp, Final Action on Framework Action to Modify Recreational Red Grouper Bag Limits and Accountability Measures, Final Action on Framework Amendment 2 to the Coastal Migratory Pelagics Fishery Management Plans (FMP)—Atlantic Migratory Group Spanish Mackerel Trip Limits, and open testimony on any other fishery issues or concerns. People wishing to speak before the Council should complete a public comment card prior to the comment period.
– Recess –

5:30 p.m.–7:30 p.m.: The Council will continue to receive public testimony.
– Recess –

Council Session Agenda, Thursday, October 23, 2014, 8:30 a.m. until 5:30 p.m.

8:30 a.m.–4:30 p.m.: The Council will continue to receive committee reports from the following: Reef Fish Management Committee (8:30 a.m.–11:30 a.m.), Shrimp Management Committee (1 p.m.–1:30 p.m.), Red Drum Management Committee (1:30 p.m.–1:45 p.m.), Gulf SEDAR Management Committee (1:45 p.m.–2 p.m.), Joint Law Enforcement Committees (2 p.m.–3 p.m.), Mackerel Management Committee (3 p.m.–3:30 p.m.), Data Collection Administrative Committee (3:30 p.m.–4 p.m.), and the Joint Administrative Policy and Budget/Personnel Committee (4 p.m.–4:30 p.m.)

4:30 p.m.–5:15 p.m.: The Council will receive a summary report on the Pacific Fishery Management Council Meeting and an update on the RESTORE Act Science Program.

5:15 p.m.–5:30 p.m.: Other Business—Status of Biscayne National Park Implementation of Fishing Regulations
–Adjourn –

The Agenda is subject to change, and the latest version will be posted on the Council's file server, which can be accessed by going to the Council Web site at *http://www.gulfcouncil.org* and clicking on FTP Server under Quick Links. For meeting materials see folder ''Briefing Books/Briefing Book 2014–10'' on Gulf Council file server. The username and password are both ''gulfguest''. The meetings 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 these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for 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 30, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–23616 Filed 10–2–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 140925800–4800–01]

RIN 0660–XC013

Telecommunications Assessment of the Arctic Region

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Inquiry.

SUMMARY: Consistent with the *Implementation Plan for the National Strategy for the Arctic Region,* the National Telecommunications and Information Administration (NTIA) issues this Notice of Inquiry (Notice) to seek public comment on the current and potential availability of communications services in the Arctic region.

DATES: Comments must be received no later than November 3, 2014.

ADDRESSES: Comments may be submitted by email to

arcticnoi@ntia.doc.gov. Comments also may be submitted by mail to: National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4898, Attn: Arctic NOI, Washington, DC 20230. Responders should include the name of the person or the organization, as well as a page number on each page of their submissions. Paper submissions should also include a CD or DVD with an electronic version of the document, which should be labeled with the name and organization of the filer. All email messages and comments received are a part of the public record and will generally be posted without change to the NTIA Web site at *http://www.ntia.doc.gov/federal-register-notice/2014/comments-arctic-noi.* All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Please do not submit any confidential or business sensitive information. NTIA intends to use the information provided in response to this Notice about potential future plans for communications networks in Arctic Alaska only in the aggregate, excluding companies' names and customer information. Additionally, this information will be used to describe potential future communications developments to fill the gaps where services are not currently provided.

FOR FURTHER INFORMATION CONTACT: Helen Shaw, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4874, Washington, DC 20230; telephone: (202) 482–1157; email *hshaw@ntia.doc.gov*. Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002.

SUPPLEMENTARY INFORMATION:

I. Background

On May 10, 2013, President Obama issued the *National Strategy for the Arctic Region* (*National Strategy*) to articulate strategic priorities to enable the United States to ''respond effectively to challenges and emerging opportunities arising from significant increases in Arctic activity due to the diminishment of sea ice and the emergence of a new Arctic environment.'' [1] The *National Strategy* includes: (1) Advancing U.S. security interests; (2) pursuing responsible Arctic Region stewardship; and (3) strengthening international cooperation. The *National Strategy* states that these efforts will be guided by: ''Providing for the security of the United States; protecting the free flow of resources and commerce; protecting the environment; addressing the needs of indigenous communities; and enabling scientific research.'' [2] The United States is a member of an eight nation Arctic Council, also consisting of Canada, the Russian Federation, Denmark, Iceland, Finland, Sweden, and Norway.[3]

The White House issued the *Implementation Plan for the National Strategy for the Arctic Region* (*Implementation Plan*) in January 2014, setting forth the methodology, process, and approach for executing the *National Strategy*.[4] The *Implementation Plan* provides four guiding principles: (1) Safeguard peace and stability; (2) make decisions using the best available information; (3) pursue innovative arrangements; and (4) consult and coordinate with Alaska Natives.[5] Furthermore, the *Implementation Plan* emphasizes that the successful implementation of the *National Strategy* will depend upon the active engagement and coordination with Alaska Natives and the State of Alaska.[6]

The *Implementation Plan* calls on NTIA, with support from the Department of Defense, Department of Homeland Security (U.S. Coast Guard), Department of Transportation, and the Federal Communications Commission (FCC), to ''assess the telecommunication infrastructure in the Arctic and use new technology to support improved communications in the region, including in areas of sparse population to facilitate emergency response.'' [7] The *Implementation Plan* outlines three distinct deliverables: (1) ''[a]ssess current and potential availability of telecommunications services in the Arctic region, including local and long-distance terrestrial, commercial mobile cellular, public safety services, emergency services, navigational safety and satellite voice, and broadband channel availability by the end of 2014;'' (2) ''[d]evelop a framework that lists and prioritizes opportunities for investment in telecom capacity and capability, with a strong emphasis on innovative technologies with Federal, State, and international public-private partnerships by the end of 2015;'' and (3) ''[i]n collaboration with the Arctic Council, evaluate feasibility of an Arctic-wide telecommunications network and radio frequency spectrum management with the goals of compatible interference-free operations and Arctic-wide communications by end of the U.S. Chairmanship of the Arctic Council.'' [8]

The *Implementation Plan* states further that ''[s]uccess of this initiative will be the development of a framework, in coordination with Federal, State, local, tribal, native governments and the commercial enterprise, to prioritize investments in new facility and equipment installations such as high-powered high frequency radio stations, satellite ground stations, fixed microwave radio stations, public safety radio facilities, mobile cellular base stations, and fiber optic cable installations that enhance security and safety in the Arctic.'' [9]

NTIA and its Federal partners will leverage information currently available from government, commercial, non-profit, and academic entities. For example, NTIA's State Broadband Initiative funded a comprehensive assessment of broadband infrastructure across Alaska, which resulted in an August 2013 report entitled *A Blueprint for Alaska's Broadband Future* (*Blueprint Report*).[10] We will also utilize data from the *National Broadband Map* and *the Alaska Emergency Response Guide for Small Communities.*[11]

II. Objectives of This Notice

Effective communications services are critical to accommodate the increase in commercial, residential, governmental, and other critical economic and social activities across Arctic Alaskan

[1] *National Strategy for the Arctic Region,* The White House (May 10, 2013), *available at http://www.whitehouse.gov/sites/default/files/docs/nat_arctic_strategy.pdf*. For purposes of this Notice, the Arctic Region is defined as the geographic region north of the Arctic Circle, which is at 66° 33′ 39″ North latitude. The area includes offshore areas such as the Chukchi Sea and the Beaufort Sea.

[2] *Id.* at 4.

[3] For purposes of this Notice, the ''pan Arctic'' region is defined as the region above the Arctic Circle that includes the areas of all eight Arctic Council member nations.

[4] *Implementation Plan for the National Strategy for the Arctic Region,* The White House, January 2014, *available at http://www.whitehouse.gov/sites/default/files/docs/implementation_plan_for_the_national_strategy_for_the_arctic_region_-_fi....pdf.*

[5] *Id.* at 4.

[6] Press Release, *White House Releases Implementation Plan for the National Strategy for the Arctic Region,* National Security Council (Jan. 30, 2014), *available at http://www.whitehouse.gov/blog/2014/01/30/white-house-releases-implementation-plan-national-strategy-arctic-region.*

[7] *Implementation Plan* at 6.

[8] *Id.* at 6–7.

[9] *Id.* at 7.

[10] *A Blueprint for Alaska's Broadband Future,* Statewide Broadband Task Force (August 2013), *available at http://www.alaska.edu/files/oit/bbtaskforce/2013-08-AK-Broadband-Task-Force-Report%7CA-Blueprint-for-Alaska's-Broadband-Future.pdf.*

[11] *Alaska Emergency Response Guide for Small Communities,* State of Alaska Department of Military and Veterans Affairs and Homeland Security & Emergency Management (March 2013), *available at http://ready.alaska.gov.*

communities, as well as the pan-Arctic region in general. A robust communications infrastructure is a critical tool in economic development, and it is expected that communications networks will contribute to small business development, economic growth, and corresponding employment increases. Accurate and reliable networks and services, such as radionavigation, are critical to the safety and security of the region.

This Notice offers an opportunity for all interested parties to provide information regarding existing and potential communications technologies, services and applications for the Arctic region. We invite input from communication service providers that currently serve, or plan to serve, Arctic Alaska and the pan-Arctic region. We also seek comment from subject matter experts on the questions below. We further invite feedback from all user segments (*e.g.,* residential, business, government, or community organizations) residing within the Alaskan portion of the Arctic and all users whose activities may require communications access across any portion of the Arctic.

For purposes of this Notice, the Arctic Region of Alaska is defined as the geographic region north of the Arctic Circle, which is at 66° 33′ 39″ North latitude. The area includes offshore areas such as the Chukchi Sea and the Beaufort Sea. However, parties may submit information and data outside of this geographic area if its inclusion is relevant to the questions that follow.

III. Request for Comments on Available and Planned Communications Services

The *Implementation Plan* specifies a number of existing and potential services for NTIA to assess, including: Local and long-distance terrestrial, commercial mobile cellular, public safety services, emergency services, navigational safety, satellite voice, and broadband services. These services reflect a variety of network technologies. We seek comment on the availability of all network technologies, general communications services, and dedicated networks and special services targeted for specific user segments in Arctic Alaska. Interested parties should, therefore, provide information on the availability and adequacy of networks and services listed below, and any others that support the safety and security, economic development, and other objectives in Arctic Alaska that were noted in the *National Strategy*.

- *General Network Technologies:* Wireline networks (copper, cable, optical fiber, or hybrid networks), fixed wireless networks (point-to-point, point-to-multipoint), mobile wireless networks, Wi-Fi networks, fiber and microwave-based middle-mile networks, satellite systems, submarine cable networks, terrestrial broadcast networks, high frequency (HF) radio networks, very high frequency (VHF), unlicensed systems, and any forms of hybrid networks.
- *General Communications Services:* Voice, data, and video services that can be delivered to fixed or mobile devices.
- *Dedicated Networks and/or Special Communications Services:* Public safety, emergency, search and rescue services, radionavigation, aeronautical, maritime communications, weather services, or other categories for specific user segments.

We seek information about the location and the adequacy of existent networks owned and managed by commercial service providers, government entities, non-profits, research and education entities, or any other ownership and management models. Many of these networks and services target terrestrial-based users (*e.g.,* mobile cellular, terrestrial fiber, fixed wireless). Input should pertain to the network infrastructure and services within the Arctic portion of Alaska. Other services may address the needs of both Alaskan-based and pan-Arctic users (e.g., satellite, maritime communications).

To help guide commenters, we seek information about the availability and adequacy of telecommunications services in the following Arctic Alaskan communities and key geographic locations: Alatna, Allakaket, Ambler, Anaktuvuk Pass, Arctic Village, Atqasuk, Barrow (including Point Barrow), Beaufort Sea area, Beechey Point, Bettles, Cape Blossom, Cape Lisburne, Chalkyitsik, Chandalar, Chuckchi Sea area, Coldfoot, Deadhorse, Evansville, Fort Yukon, Kaktovik, Kiana, Kivalina, Kobuk, Kotzebue, New Allakaket, Noatak, Northstar Island, Noorvik, Nuiqsut, Point Hope, Point Lay, Prudhoe Bay/Prudhoe Bay Oil Field, Red Dog Mine, Selawik, Sheshalik, Shungnak, Umiat, Venetie, Wainwright, and Wiseman. This list should not be considered all-inclusive, and absence from the list should not preclude responses on other Arctic locations.

We encourage a broad response in order to assist our efforts to develop a comprehensive assessment that considers all service providers, user segments, stakeholders, and other interested parties. We welcome responses and comments covering the following areas: (a) Available networks and services; (b) potential networks and services; (c) recommendations to foster the deployment of advanced communication networks and services; and (d) adoption barriers. Please send links to relevant documents, such as studies and reports.

IV. Questions About Telecommunications Services and Technologies in Arctic Alaskan Communities and the Pan-Arctic Region

(1) Existing and Potential Networks and Services in Arctic Alaska: Which Arctic Alaskan communities have access to, or lack access to, the network technologies and communications services that enable local residents, businesses, community institutions, local authorities, and other user groups to effectively meet their communications requirements? What network technologies and services are being planned to address both current and emerging user needs?

(2) Wireline-Based Broadband Services: Which Arctic Alaskan communities have access to fixed wireline services that offer a minimum broadband speed of 4 Mbps download and 1 Mbps upload? [12] For such communities, is access available to all homes, businesses, and community anchor institutions? For communities with fiber, what factors enable the business case for such deployment? For communities that have advanced speeds via copper-based plant, please cite the types of upgrades undertaken (*e.g.,* copper-bonding, hybrid fiber systems, or middle-mile upgrades to central offices). For communities with microwave or fiber backhaul, what key enablers led to such deployment (*e.g.,* federal or state subsidy, public-private partnerships, innovative business models)?

(3) Fixed Wireless Broadband Services: Which Arctic Alaskan communities have access to fixed wireless broadband with minimum broadband speeds of 4 Mbps download and 1 Mbps upload? What are the key advantages and limitations of these networks? What best practices and lessons can be applied to expand fixed wireless solutions to other underserved Arctic Alaskan communities?

(4) Mobile Wireless: Which Arctic Alaskan communities have access to mobile wireless broadband services that

[12] Federal Communications Commission, *Tenth Broadband Progress Notice of Inquiry* (August 2014), *available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0805/FCC-14-113A1.pdf.* The Commission applies this benchmark to assess the pace of broadband deployment, and has asked in the cited Notice whether it should modify this threshold.

offer at least 4 Mbps download and 1 Mbps upload speeds? What percentage of households has replaced wireline services with mobile wireless services? Under what circumstances are mobile wireless services considered the most effective broadband solution for Arctic Alaskan communities, taking into account pricing, coverage, service quality, scale, and other key factors? What are the key barriers (*e.g.,* economic, technology, regulatory, or spectrum availability) preventing wide-scale deployment of third and fourth generation (3G and 4G) technologies in the Arctic Alaskan region? To what extent is the lack of middle-mile fiber or other broadband backhaul to base stations a key barrier to higher speed deployments?

(5) Public Safety Services: Which Arctic Alaskan communities have access to, or lack access to, wire and wireless public safety communications systems used by law enforcement, fire emergency, and emergency medical first responders? Are there plans to extend the Alaska Land Mobile Radio network (ALMR) and the State of Alaska Telecommunications System (SATS) to any Arctic Alaskan communities? What are the benefits and limitations of extending the ALMR and SATS networks to these communities and first responders and what key barriers may limit this extension? Which other network technologies and services are used by public safety professionals (*e.g.,* dispatch land mobile radio systems, commercial mobile radio, mobile satellite services, high-frequency), and what are the key strengths and limitations of these networks and services? How is communications interoperability achieved among various first responders, and among federal, state, and local agencies? What network technologies and services are being planned for public safety communications, and what are the key enablers and challenges with regard to the rollout of these networks?

(6) Emergency Communications and Search and Rescue: What are the emergency wired and wireless communications services available within the listed Arctic Alaska communities, and other communities and locations, and near and far offshore areas? How would these communities connect into the overall Alaskan communications backbone network in case of a major emergency? To what extent are there areas without any emergency communications services? What communications services are used for search and rescue operations and what is their availability and reliability? Are the existing communications services used for search and rescue operations adequate or are additional services necessary?

(7) Satellite Communications Services: What specific satellite-based services are widely used by Arctic Alaskan communities and users across the pan-Arctic region? What are the strengths and limitations of using satellites generally and for specific communications services? What key dependencies and factors impact the likelihood of these planned systems being launched in a timely manner? Which specific user segments are being targeted and what services will be offered? Do existing and planned satellite systems target the broader pan-Arctic footprint and provide 24/7 availability? For areas where satellites constitute the only form of communications, what ensures reasonable pricing and service quality? In regard to older satellites that were formerly in the geostationary orbit and are now operating in an inclined orbit, how many hours of operation and what quality of service do they offer in the Arctic Alaskan and in the pan-Arctic area?

(8) Broadcasting and Broadcasting-Satellite Services: What methods are used to receive radio and television broadcast signals in Arctic Alaskan areas? What improvements can be made if such signals are not readily available? Does the Alaska Rural Communications System (ARCS) provide adequate broadcasting coverage in the Arctic Alaskan communities? To what extent do the broadband speeds of other terrestrial and satellite networks enable the delivery of high-quality video?

(9) Submarine Cable Networks: How do existing submarine cable networks currently support the delivery of communications services in Arctic Alaskan communities and the pan-Arctic region? What are the advantages and limitations of these networks? How will new submarine cable facilities being planned for this region contribute to the performance, economics, and overall network access for the previously mentioned services? What is the timetable for building and operating these planned facilities and what key risks could impact their timing, scale, availability, and overall sustainability?

(10) Aeronautical and Maritime Communications: What communications systems and technologies support aircraft and maritime voice and data communications? What are the key strengths and limitations of these networks? What new systems are being planned to address aviation and maritime user needs?

(11) Aeronautical and Maritime Radionavigation: What radionavigation systems are currently used by commercial ships and aircrafts in the Arctic region? What are the key strengths and limitations of these systems, especially with regard to location reliability? What new satellite-based navigation systems are being planned, and what are their comparative advantages relative to current systems? What key dependencies and factors impact the likelihood of these systems being launched in a timely manner?

(12) Weather and Other Information Services: How effectively do broadcast and other networks support the delivery of weather monitoring alerts (including warnings, watches, and forecasts) and non-weather hazard alerts across Arctic Alaska and the pan-Arctic region, especially with regard to speed of delivery and service reliability? How do Arctic broadcasts and other information reports for weather monitoring compare to those services in other parts of Alaska? What initiatives are underway, or can be recommended, to improve the delivery and receipt of weather information and other critical alerts, including system upgrades and/or new infrastructure deployments? What innovations across satellite imaging and other technology developments offer the greatest potential?

(13) High Frequency Radio Communications (3–30 MHz): How do high frequency (HF) radio systems serve Arctic Alaskan end-users and to what degree are they used especially for emergency and search and rescue communications? What are the comparative advantages and limitations of HF radio relative to other technologies, especially with regard to reliability, privacy, and degree of availability after considering seasonal and temporal variances? Which frequencies are currently used and which ones offer the highest quality of service? What improvements have been made, or are planned, on HF radios to improve communications?

(14) Very High Frequency Radio Communications (30–300 MHz): How do Arctic Alaskan residents use VHF radios to communicate?

(15) Unlicensed (License-Exempt) Systems: What applications and services utilizing unlicensed spectrum bands are used across the Arctic region and to what extent? To what extent is unlicensed spectrum used for providing broadband for residential and business users? What speeds are available to these users? To what extent do power limits and other technical restrictions in unlicensed spectrum bands impede the

ability to deliver services to more homes and businesses?

(16) Existing and Potential Networks and Services Across the Pan-Arctic Region: Which pan-Arctic regions have access to, or lack access to, network technologies and communications services critical to the safety and security of the pan-Arctic region, and the increasing activity across commercial, maritime, research, tourism, and other growing sectors? What network technologies and services are being planned across the pan-Arctic region to address both current and emerging user needs?

(17) Fostering the Deployment of Advanced Communications Networks and Services in Arctic Alaskan Communities: What strategies are recommended to facilitate the deployment of additional communications capabilities across Arctic Alaska? These recommendations may involve commercial or public investment, new business models, policy and regulatory changes (federal, state, or local), public-private partnerships, research and innovation developments, or other suggestions. Please comment on best practices in other Alaskan communities and other rural and remote areas.

(18) Fostering the Deployment of Advanced Communication Networks and Services in the Pan-Arctic Region: What would facilitate the deployment of advanced networks to ensure the safety, security, and the commercial interests of the United States and other international users in the pan-Arctic region? These recommendations may involve commercial or public investment, new business models, policy and regulatory changes (federal or international), international agreements, public-private partnerships, research and innovation developments, or other suggestions. We seek comment on best practices from other pan-Arctic locations, and other rural and remote areas.

(19) Adoption Barriers: What key barriers limit the adoption of existing services for users across both Arctic Alaska and the broader pan-Arctic region? How can these adoption barriers be addressed?

Dated: September 29, 2014.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. 2014–23517 Filed 10–2–14; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and, deletes a service previously provided by such agency.

DATES: *Comments Must Be Received On Or Before:* 11/3/2014.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

Sweatshirt, Physical Fitness, USMC, Unisex, Long Sleeve

NSN: 8415–00–SAM–3800—Black, Size X-Large
NSN: 8415–00–SAM–3801—Black, Size Small
NSN: 8415–00–SAM–3802—Black, Size Medium
NSN: 8415–00–SAM–3803—Black, Size Large
NSN: 8415–00–SAM–3804—Black, Size X-Large
NSN: 8415–00–SAM–3805—Maroon, Size Small
NSN: 8415–00–SAM–3806—Maroon, Size Medium
NSN: 8415–00–SAM–3807—Blue, Size Medium
NSN: 8415–00–SAM–3808—Yellow, Size Medium
NSN: 8415–00–SAM–3809—Yellow, Size Small
NSN: 8415–00–SAM–3810—Yellow, Size Large
NSN: 8415–00–SAM–3811—Green, Size Medium
NSN: 8415–00–SAM–3812—Red, Size Small
NSN: 8415–00–SAM–3813—Red, Size Medium
NSN: 8415–00–SAM–3814—Red, Size Large
NSN: 8415–00–SAM–3815—Blue, Size Small

T-Shirt, Mesh, Physical Fitness, USMC, Unisex, Short Sleeve

NSN: 8415–00–SAM–3771 —, Gold, Size Small
NSN: 8415–00–SAM–3772—Gold, Size Medium
NSN: 8415–00–SAM–3773—Gold, Size Large
NSN: 8415–00–SAM–3774—Gold, Size X-Large
NSN: 8415–00–SAM–3775—Blue, Size Small
NSN: 8415–00–SAM–3776—Blue, Size Medium
NSN: 8415–00–SAM–3777—Blue, Size Large
NSN: 8415–00–SAM–3778—Blue, Size X-Large
NSN: 8415–00–SAM–3779—Maroon, Size X-Small
NSN: 8415–00–SAM–3780—Maroon, Size Small
NSN: 8415–00–SAM–3781—Maroon, Size Medium
NSN: 8415–00–SAM–3782—Red, Size Small
NSN: 8415–00–SAM–3783—Red, Size Medium
NSN: 8415–00–SAM–3784—Red, Size Large
NSN: 8415–00–SAM–3785—Red, Size X-Large
NSN: 8415–00–SAM–3786—Gray, Size Small
NSN: 8415–00–SAM–3787—Gray, Size Medium
NSN: 8415–00–SAM–3788—Gray, Size Large
NSN: 8415–00–SAM–3789—Green, Size X-Small
NSN: 8415–00–SAM–3790—Green, Size Small
NSN: 8415–00–SAM–3791—Green, Size Medium
NSN: 8415–00–SAM–3792—Green, Size Large
NSN: 8415–00–SAM–3793—Black W/ Weapons Logo, Size Small
NSN: 8415–00–SAM–3794—Black W/ Weapons Logo, Size Medium
NSN: 8415–00–SAM–3795—Black W/ Weapons Logo, Size Large
NSN: 8415–00–SAM–3796—Gray, Size X-Small
NSN: 8415–00–SAM–3797—Black W/Drill Instructor Logo, Small
NSN: 8415–00–SAM–3798—Black W/Drill Instructor Logo, Medium
NSN: 8415–00–SAM–3799—Black W/Drill Instructor Logo, Large
NPA: Beaufort Vocational Rehabilitation Center, Beaufort, SC
Contracting Activity: Dept of the Navy, Commanding General, MCRD, Parris Island, SC
Coverage: C-List for 100% of the requirement of the U.S. Marine Corps Parris Island Recruiting Depot, as aggregated by the Commanding General, U.S. Marine Corps

Parris Island Recruiting Depot, Parris Island, SC.

Work Lamp

NSN: 6230–00–NIB–0060—Extendable, Torch Style, Rubber Grip, LED, Rechargeable
NSN: 6230–00–NIB–0061—Baton Style, Rubber Grip, LED, Rechargeable
NSN: 6230–00–NIB–0062—Aluminum Frame, Superbright, COB LED, Rechargeable
NPA: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA
Coverage: B-List for the Broad Government Requirement as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.

Services

Service Type/,Locations: Custodial Service, Architect of the Capitol, Dirksen Senate Office Building, 1st and C Streets NE., Washington, DC
Hart Senate Office Building, 2nd and C Streets NE., Washington, DC
Russell Senate Office Building, 1st and Constitution Avenue NE., Washington, DC
NPA: Davis Memorial Goodwill Industries, Washington, DC
Contracting Activity: Architect of the Capitol, U.S. Capitol Building, Washington, DC
Service Type/,Location: Grounds Maintenance and Snow Removal Service, US Army, US Army Research Laboratory, 4402 Susquehanna Avenue, Aberdeen Proving Ground, MD
NPA: Melwood Horticultural Training Center, Upper Marlboro, MD
Contracting Activity: Dept of the Army, W2SD ENDIST PHILADELPHIA, Philadelphia, PA

Deletion

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Janitorial/,Custodial Service, Department of Agriculture, Kootenai National Forest, Libby Ranger Station, Libby, MT
NPA: Lincoln Training Center and Rehabilitation Workshop, South El Monte, CA
Contracting Activity: Department of Agriculture, Procurement Operations Division, Washington, DC

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2014–23605 Filed 10–2–14; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes a product and service from the Procurement List previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 11/3/2014.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Deletions

On 8/29/2014 (79 FR 51561), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the product and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product and service deleted from the Procurement List.

End of Certification

Accordingly, the following product and service are deleted from the Procurement List:

Product

NSN: 5340–00–410–2296—Cover, Fire Extinguisher
NPA: Huntsville Rehabilitation Foundation, Huntsville, AL
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA

Service

Service Type/,Location: Catering Service, Military Entrance Processing Station, Leo O'Brien Federal Building, Suite 810, Albany, NY
NPA: Albany County Chapter, NYSARC, Inc., Slingerlands, NY
Contracting Activity: Dept of the Army, W6QM MICC Ctr-Ft Knox, Ft Knox, KY

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2014–23604 Filed 10–2–14; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0116]

Proposed Collection; Comment Request

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Information Systems Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 2, 2014.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket

number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information. Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of Public Affairs, Defense Information Systems Agency, 6910 Cooper Rd, Ft. Meade Maryland 20755. Contact 301–225–8100 or *disa.meade.spi.mbx.disa-pao@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Defense Connect Online Satisfaction Survey; OMB Control Number 0704–TBD.

Needs and Uses: The information collection requirement is necessary to measure user satisfaction of the Defense Connect Online (DCO) collaboration tool in accordance with the Quality Assurance Surveillance Plan required by contract HC1047–11–C–4013.

Affected Public: Individuals or Households.

Annual Burden Hours: 300.

Number of Respondents: 1200.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Respondents are DoD contractors who are registered users of DCO as part of their official duties. The completed web-based satisfaction survey responses are aggregated and reported to DISA as part of the Quality Assurance Surveillance Plan. Additionally, users who voluntarily provide their contact information receive a follow-up call from the DCO service provider to discuss any concerns or issues they have with DCO performance.

Dated: September 30, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–23609 Filed 10–2–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 14–27]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 14–27 with attached transmittal and policy justification.

Dated: September 30, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

SEP 26 2014

Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 14-27, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Thailand for defense articles and services estimated to cost $89 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J.W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification

BILLING CODE 5001–06–C

Transmittal No. 14–27

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Thailand

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$55 million
Other	$34 million
TOTAL	$89 million

* as defined in Section 47(6) of the Arms Export Control Act

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 9 UH–72A Lakota Helicopters, warranty, spare and repair parts, support equipment, communication equipment, publications and technical documentation, Aviation Mission Planning Station, personnel training and training equipment, U.S. Government and contractor technical and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Army (UAM)

(v) *Prior Related Cases, if any:* FMS case UAK–$54M–8Jan14

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* 26 Sep 14

POLICY JUSTIFICATION

Thailand—UH–72A Lakota Helicopters

The Government of Thailand has requested a possible sale of 9 UH–72A Lakota Helicopters, warranty, spare and repair parts, support equipment, communication equipment, publications and technical documentation, Aviation Mission Planning Station, personnel training and training equipment, U.S. Government and contractor technical and logistics support services, and other related elements of logistics support. The estimated cost is $89 million.

This proposed sale will contribute to the foreign policy and national security of the United States, by helping to improve the security of a major non-NATO ally.

This proposed sale will contribute to Thailand's goal of upgrading and modernizing its military forces with a new light utility helicopter capable of meeting requirements for rotary-wing transportation, while further enhancing interoperability between Thailand the U.S., and among other allies. Thailand will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be EADS North America in Herndon, Virginia. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require ten contractor representatives to travel to Thailand for a period of five weeks for equipment deprocessing/fielding and system checkout.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2014–23600 Filed 10–2–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 14–49]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 14–49 with attached transmittal and policy justification.

Dated: September 29, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

SEP 24 2014

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 14-49, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Canada for defense articles and services estimated to cost $41 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 14–49

Notice of Proposed Issuance of letter of Offer Pursuant to Section 36(b)(1) Of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Canada

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$25 million
Other	$16 million
TOTAL	$41 million

* as defined in Section 47(6) of the Arms Export Control Act

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 12 MK–48 Mod 7 Advanced Technology Torpedo Conversion Kits with containers, spare and repair parts, weapon system support and integration, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and technical, and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Navy (APE, Amd #3)

(v) *Prior Related Cases, if any:*

FMS case AKR–$31M–09Sep87
FMS case APE–$118M–31Jan12

(vi) *Sales Commissions, Fee etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article Proposed to be Sold:* None.

(viii) *Date Report Delivered to Congress:* 24 Sep 14

POLICY JUSTIFICATION

Canada—MK–48 Mod 7 Advanced Technology (AT) Torpedo Kits

The Government of Canada has requested a possible sale of 12 MK–48 Mod 7 Advanced Technology Torpedo Conversion Kits with containers, spare and repair parts, weapon system support and integration, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and technical, and logistics support services, and other related elements of logistics support. These kits will upgrade 12 of Canada's existing inventory of MK–48 torpedoes from Mod 4 to Mod 7. The estimated cost is $41 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a NATO ally that has been, and continues to be, a key democratic partner of the United States in ensuring peace and stability.

The sale of this equipment and support will not alter the basic military balance in the region.

Canada intends to use the MK 48 Mod 7AT Torpedoes on its Royal Canadian Navy's Victoria (formerly Upholder) Class submarines. Canada has significant relevant infrastructure and experience with modern torpedoes, including MK–48 Mod 4/4M and MK–46 Mod 5A (SW) torpedoes. Canada will have no difficulty absorbing these additional conversion kits.

The principal contractor will be Lockheed Martin Sippican, Inc. in Marion, Massachusetts. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Canada.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2014–23532 Filed 10–2–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 14–26]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 14–26 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 30, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

SEP 26 2014

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 14-26, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the United Arab Emirates for defense articles and services estimated to cost $2.5 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

for J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 14–26

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* United Arab Emirates (UAE)

(ii) *Total Estimated Value:*

Major Defense Equipment* ..	$ 0 billion
Other	$2.5 billion
TOTAL	$2.5 billion

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* the refurbishment and modification of 4,569 Mine Resistant Ambush Protected (MRAP) Vehicles (that include 29 MaxxPro Long Wheel Base (LWB), 1,085 MaxxPro LWB chassis, 264 MaxxPro Base/MRAP Expedient Armor Program (MEAP) capsules without armor, 729 MaxxPro Bases, 283 MaxxPro MEAP without armor, 970 MaxxPro Plus, 15 MRAP Recovery Vehicles, 1,150 Caiman Multi-Terrain Vehicles without armor, and 44 MRAP All-Terrain Vehicles) being sold separately from U.S. Army stock pursuant to section 21 of the Arms Export Control Act, as amended, as Excess Defense Articles (EDA). Also

included are Underbody Improvement Kits, spare and repair parts, support equipment, personnel training and training equipment, publications and technical documentation, Field Service Representatives' support, U.S. Government and contractor logistics and technical support services, and other related elements of logistics and program support. Notification for the sale from stock of the MRAP vehicles referenced above has been provided separately, pursuant to the requirements of section 7016 of the Consolidated Appropriations Act, 2014 and section 516 of the Foreign Assistance Act of 1961, as amended.

(iv) *Military Department:* Army (IEA)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission Fee, etc., paid, offered, or agreed to be paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services proposed to be sold:* See attached annex.

(viii) *Date Report Delivered to Congress:* 26 Sep 14

POLICY JUSTIFICATION

UAE—Mine Resistant Ambush Protected (MRAP) Vehicles

The Government of the United Arab Emirates (UAE) has requested a possible sale for the refurbishment and modification of 4,569 Mine Resistant Ambush Protected (MRAP) Vehicles (that include 29 MaxxPro Long Wheel Base (LWB), 1,085 MaxxPro LWB chassis, 264 MaxxPro Base/MRAP Expedient Armor Program (MEAP) capsules without armor, 729 MaxxPro Bases, 283 MaxxPro MEAP without armor, 970 MaxxPro Plus, 15 MRAP Recovery Vehicles, 1,150 Caiman Multi-Terrain Vehicles without armor, and 44 MRAP All-Terrain Vehicles) being sold separately from U.S. Army stock pursuant to section 21 of the Arms Export Control Act, as amended, as Excess Defense Articles (EDA). Also included are Underbody Improvement Kits, spare and repair parts, support equipment, personnel training and training equipment, publications and technical documentation, Field Service Representatives' support, U.S. Government and contractor logistics and technical support services, and other related elements of logistics and program support. Notification for the sale from stock of the MRAP vehicles referenced above has been provided separately, pursuant to the requirements of section 7016 of the Consolidated Appropriations Act, 2014 and section 516 of the Foreign Assistance Act of 1961, as amended. The estimated cost is $2.5 billion

This proposed sale will contribute to the foreign policy and national security of the U.S. by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

The UAE intends to utilize the EDA MRAP vehicles to increase force protection, to conduct humanitarian assistance operations, and to protect vital international commercial trade routes and critical infrastructure. Additionally, these MRAPs will enhance UAE's burden sharing capacity and defensive capabilities.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Navistar Defense in Lisle, Illinois; BAE Systems in Sealy, Texas; and Oshkosh Defense in Oshkosh, Wisconsin. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require multiple trips to the UAE involving many U.S. Government and contractor representatives for approximately three or more years to provide program support and training.

There will be no adverse impact on the U.S. defense readiness as a result of this proposed sale.

Transmittal No. 14–26

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Mine Resistant Ambush Protected (MRAP) vehicle is an armored, multi-purpose combat vehicle intended to support mounted urban operations to include convoy security support and dismounted patrols. It is designed to increase crew survivability. The vehicle has a blast-resistant underbody designed to protect the crew from mine blasts, fragmentation, and direct fire weapons.

2. All MRAP vehicle information needed to operate, train, and maintain the vehicles are Unclassified; some design and test data, design performance parameters, armoring methodology, vulnerabilities, armor types and configuration can be classified up to Secret.

3. If a technologically advanced adversary were to obtain knowledge of the design performance and functional characteristics of specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the recipient country can provide the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of the United Arab Emirates.

[FR Doc. 2014–23599 Filed 10–2–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Federal Advisory Committee Meeting

AGENCY: DoD.

ACTION: Meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the Defense Business Board. This meeting is open to the public.

DATES: The public meeting of the Defense Business Board (hereafter referred to as ''the Board'') will be held on Thursday, October 23, 2014. The meeting will begin at 9:30 a.m. and end at 10:30 a.m. (Escort required; see guidance in the **SUPPLEMENTARY INFORMATION** section, ''Public's Accessibility to the Meeting.'')

ADDRESSES: Room 3D557 in the Pentagon, Washington, DC (Escort required; see guidance in the **SUPPLEMENTARY INFORMATION** section, ''Public's Accessibility to the Meeting.'')

FOR FURTHER INFORMATION CONTACT: *Committee's Designated Federal Officer:* The Board's Designated Federal Officer is Phyllis Ferguson, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, *phyllis.l.ferguson2.civ@mail.mil,* 703–695–7563. For meeting information please contact Ms. Debora Duffy, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, *debora.k.duffy.civ@mail.mil,* 703–697–2168.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the

Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: At this meeting, the Board will receive updates from the ''Guiding Principles to Optimize DoD's Research and Development Investments'' Task Group Study and the ''Transformational Change for the Department of Defense Business Systems'' Task Group Study. The mission of the Board is to examine and advise the Secretary of Defense on overall DoD management and governance. The Board provides independent advice which reflects an outside private sector perspective on proven and effective best business practices that can be applied to DoD.

Availability of Materials for the Meeting: A copy of the agenda and the terms of reference for the Task Group studies may be obtained from the Board's Web site at *http://dbb.defense.gov/meetings.* Copies will also be available at the meeting.

Meeting Agenda:

9:30 a.m.–10:30 a.m. Task Group Updates on:

- *''Guiding Principles to Optimize DoD's Research and Development Investments''*
- *''Transformational Change for the Department of Defense Business Systems''*

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public meeting must contact Ms. Debora Duffy at the number listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 12:00 p.m. on Wednesday, October 15 to register and make arrangements for a Pentagon escort, if necessary. Public attendees requiring escort should arrive at the Pentagon Metro Entrance with sufficient time to complete security screening no later than 9:00 a.m. on October 23, 2014. To complete security screening, please come prepared to present two forms of identification and one must be a pictured identification card.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Duffy at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Procedures for Providing Public Comments

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Board about its mission and topics pertaining to this public meeting.

Written comments pertaining to this meeting should be received by the DFO at least five (5) business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written comments should be submitted via email to the address for the DFO given in the **FOR FURTHER INFORMATION CONTACT** section in either Adobe Acrobat or Microsoft Word format.

The public will be offered an opportunity for oral comments during the public session as time permits.

Please note that since the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's Web site.

Dated: September 30, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–23618 Filed 10–2–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Draft Supplemental Environmental Impact Statement, US Route 460, Prince George County to City of Suffolk, VA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The United States Department of the Army Corps of Engineers (USACE) is issuing this notice to advise the public that a Draft Supplemental Environmental Impact Statement (SEIS) has been prepared jointly with the Federal Highway Administration (FHWA) and in cooperation with the Virginia Department of Transportation (VDOT) for the Route 460 Location Study. The study area extends from I–295 in Prince George County on the western end to Route 58 in the City of Suffolk on the eastern end. (USACE Project Number NAO–2008–03470; FHWA Project Number STP–0005(276); VDOT Project Number 0460–969–101,P101; UPC 100432).

DATES: Written comments on the Draft SEIS will be received until the close of the 45-day public review on November 17, 2014, and can be sent to USACE and/or FHWA (see **ADDRESSES**).

ADDRESSES: William T. Walker, Chief Regulatory Branch, Corps of Engineers, 803 Front Street, Norfolk, VA 23510; Ed Sundra, Director of Program Development, Federal Highway Administration, 400 North 8th St., Suite 750, Richmond, VA 23219.

FOR FURTHER INFORMATION CONTACT: Questions about the SEIS can be directed to Alice Allen-Grimes, U.S. Army Corps of Engineers, Regulatory Branch, 803 Front Street, Norfolk, VA 23510; email*: Alice.W.Allen-Grimes@usace.army.mil;* (757) 201–7219 and/or Ed Sundra, Federal Highway Administration, 400 North 8th Street, Suite 750, Richmond, VA 23219; email: *Ed.Sundra@dot.gov; (804) 775–3357.*

SUPPLEMENTARY INFORMATION: This SEIS has been prepared pursuant to 23 CFR 771.130 and 40 CFR 1502.9(c), because of new information and circumstances relevant to environmental concerns of the federal action that may result in significant environmental impacts not evaluated in the FHWA approved Final Environmental Impact Statement (FEIS).

1. *Project Description and Background:* An FEIS for the Route 460 Location Study was approved by FHWA in June 2008 and a ROD was issued in September 2008. In November 2012, based upon the information before them at the time, FHWA completed a National Environmental Policy Act (NEPA) Re-evaluation of the FEIS, concluding that an SEIS was not needed. Based on new information bearing on the environmental impacts, including the aquatic impacts, it was later decided that an SEIS is required. The Notice of Intent to Prepare this SEIS, published in December 2013, indicated that USACE had received an application for the construction of a Route 460 project; that application was withdrawn in March 2014.

US Route 460 (Route 460) is a primary east-west arterial highway that traverses the Commonwealth of Virginia. From Interstate 295 (I–295) in Prince George County to US Route 58 (Route 58) in the City of Suffolk, Route 460 is a four lane, undivided arterial roadway with posted speeds of 35 to 55 miles per hour (mph). This eastern segment of the road was built in the mid-1930s as a two-lane roadway. In the mid-1950s, two lanes were added, widening Route 460 to four undivided travel lanes. In the study area Route 460 is approximately 55 miles in length and passes through portions of the Counties of Prince George, Surry,

Sussex, Southampton and Isle of Wight; the City of Suffolk; the incorporated towns of Waverly, Wakefield, Ivor, and Windsor; and the unincorporated communities of Disputanta and Zuni.

2. *Alternatives:* The purpose of the improvements to the Route 460 corridor is to construct a facility that is consistent with the functional classification of the corridor, sufficiently addresses safety, mobility and evacuation needs, and sufficiently accommodates freight traffic along the Route 460 corridor between Petersburg and Suffolk, Virginia. The SEIS provides detailed analysis of five alternatives (Alternatives 1–5) that meet the Purpose and Need for the project as well as applicable design standards, plus the No Build Alternative. The Build Alternatives have been developed using varying typical sections based on design standards and site specific conditions to determine the design corridor width that will likely be needed to accommodate construction and estimate the extent of impacts associated with each alternative.

Some of the Alternatives considered in the SEIS are different than the alternatives in the original EIS. Transportation Systems Management and Improvements to the Existing Alignment with a two-way left turn lane were evaluated in the EIS, but were eliminated in the SEIS, along with Mass Transit, which was considered for both the EIS and the SEIS but not retained in either. Alternatives retained from the EIS include the No Build; Alternative 1 (a limited-access tolled facility on new location south of the existing Route 460; the Preferred Alternative in the 2008 FEIS); Alternative 2 (improvements to the existing Route 460 with six limited access bypasses around the built-up areas; the four lane typical section between the towns is not the same as in the original EIS); and Alternative 3 (a limited-access tolled facility on new location north of the existing Route 460). In addition, two alternatives not previously evaluated were developed as part of the SEIS and carried forward: Alternative 4 (improvements of existing Route 460 to meet current design standards, through the towns with no bypasses); and Alternative 5 (8-lanes—4 limited-access tolled lanes with 2 bi-directional service lanes on each side between the towns—on the same general location as Alternative 2 along the existing roadway with bypasses).

3. *Issues:* There are several potential environmental and social issues that are addressed in the SEIS. Additional issues may be identified as part of the public comment process. Issues identified as potentially significant and varying depending on the Build Alternative considered include:

a. Potential impacts to wetlands ranging from 90 to 613 acres.

b. Potential impacts to streams ranging from 4 to 13 linear miles.

c. Potential displacements to residences of 78 to 167.

d. Potential displacements to businesses of 12 to 54.

e. Potential impacts to historic architectural resources.

f. Potential impacts to wildlife habitat, including riparian corridors.

g. Disruption of communities.

h. Potential impacts to designated conservation areas.

i. Cost and tolling.

4. *Scoping and Public Review Process:* Throughout the development of the project, a variety of scoping and public involvement opportunities were provided to alert the public about the project, provide information and updates, and solicit feedback. These opportunities included but were not limited to a series of public hearings in the corridor when the DEIS was issued in 2005 and a series of public meetings in 2007 to evaluate conceptual proposals received from the private sector in response to the solicitation of private-public proposals. Most recently, VDOT hosted public meetings in 2012 and 2014 to update the public on the project. Public meetings will be conducted on October 27, 29 and 30 by VDOT, with FHWA and USACE in attendance. VDOT has provided information for the public meetings, including time and location, through a variety of means, including their Web site (*http://www.route460project.org/*) and by newspaper advertisement.

5. *Additional Review and Consultation:* The SEIS complies with other Federal and State requirements including, but not limited to, the State water quality certification under Section 401 of the CWA; protection of water quality under the Virginia/National Pollutant Discharge Elimination System; consideration of minority and low income populations under Executive Order 12898; protection of endangered and threatened species under Section 7 of the Endangered Species Act; and protection of cultural resources under Section 106 of the National Historic Preservation Act.

6. *Availability of the Draft SEIS:* This Draft SEIS has been filed with the Environmental Protection Agency, published and circulated. A copy of the full document including all Technical Reports can be found at *http://www.route460project.org/SEIS*. In addition, hard copies of the SEIS can be found in area libraries and other public facilities, the locations of which can be found on the VDOT project Web site (address above).

William T. Walker,

Chief, Regulatory Branch U.S. Army Corps of Engineers, Norfolk District.

[FR Doc. 2014–23356 Filed 10–2–14; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Early Childhood Longitudinal Study Kindergarten Class of 2010–11 (ECLS–K:2011) Spring Third-Grade National Collection, Fourth-Grade Recruitment, and Fifth-Grade Tracking; Title; Correction

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On September 10, 2014 the U.S. Department of Education published a 30-day comment period notice in the **Federal Register** Pages 53698, Column 3; Page 53699, Column 1 and 2 seeking public comment for an information collection entitled, ''Early Childhood Longitudinal Study Kindergarten Class of 2010–11 (ECLS–K:2011) Spring Third-Grade National Collection, Fourth-Grade Recruitment, and Fifth-Grade Tracking''. ED is requesting a correction to the title. Title should read as Early Childhood Longitudinal Study Kindergarten Class of 2010–11 (ECLS–K:2011) Spring Fourth-Grade Data Collection & Recruitment for Fifth-Grade.

The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: September 30, 2014.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–23578 Filed 10–2–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0112]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Health Education Assistance Loan (HEAL) Program: Lender's Application for Insurance Claim Form and Request for Collection Assistance Form

AGENCY: Department of Education (ED), Federal Student Aid (FSA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing; an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 3, 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–0112 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 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger.

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: Health Education Assistance Loan (HEAL) Program: Lender's Application for Insurance Claim Form and Request for Collection Assistance Form.

OMB Control Number: 1845–0127.

Type of Review: An extension of an existing information collection.

Respondents /Affected Public: Private sector.

Total Estimated Number of Annual Responses: 6,149.

Total Estimated Number of Annual Burden Hours: 1,165.

Abstract: The HEAL Lender's application for Insurance Claim and the request for Collection Assistance forms are used in the administration of the Health Education Assistant Loan (HEAL) program. The HEAL program provided federally insured loans to students in certain health professions disciplines, and these forms are used in the administration of the HEAL program. The Lender's Application for Insurance Claim is used by the lending institution to request payment of a claim by the Federal Government. The Request for Collection Assistance form is used by the lender to request proclaims assistance from the Department. Section 525 of the Consolidated Appropriations Act, 2014, transferred the collection of the Health Education Assistance Loan (HEAL) program loans from the U.S. Department of Health and Human Services (HHS) to the U.S. Department of Education (ED).

Dated: September 30, 2014.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–23611 Filed 10–2–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0101]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; Progress in International Reading Literacy Study (PIRLS 2016) and ePIRLS Online Reading 2016 Assessment Field Test and Recruitment for Main Study

AGENCY: Institute of Education Sciences, National Center for Education Statistics (IES–NCES), 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 reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before November 3, 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–0101 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 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubdzela, 202–502–7411.

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: Progress in International Reading Literacy Study (PIRLS 2016) and ePIRLS Online Reading 2016 Assessment Field Test and Recruitment for Main Study.

OMB Control Number: 1850–0645.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 3,745.

Total Estimated Number of Annual Burden Hours: 5,772.

Abstract: We are announcing a second 30-day comment period for the Progress in International Reading Literacy Study (PIRLS) 2016 Field Test to include ePIRLS as a new extension to PIRLS in 2016. The additional ePIRLS assessment makes it possible for countries to understand how successful they are in preparing fourth grade students to read, comprehend, and interpret online information as compared to students in other participating countries. We propose to utilize the 2015 field test to determine feasibility of including ePIRLS during the PIRLS 2016 main study.

The Progress in International Reading Literacy Study (PIRLS) 2016 is coordinated by the International Association for the Evaluation of Educational Achievement (IEA) and in the U.S. administered by the National Center for Education Statistics (NCES). Since its inception in 2001, PIRLS has continued to assess students every five years (2001, 2006, 2011, 2016). It is typically administered in more than 40 countries and provides data for internationally benchmarking U.S. performance in fourth-grade reading. PIRLS also collects background information on students, parents, teachers, schools, curricula, and official education policies. Each successive round of participation in PIRLS provides trend information about U.S. 4th-grade students' knowledge and abilities in reading relative to other countries, and about the cultural environments, teaching practices, curriculum goals, and institutional arrangements that are associated with student achievement, and how these change over time in different countries. This submission describes the overarching plan for all phases of the data collection, including the field test and the main study. The field test will take place in March–April, 2015, and the main study in the spring of 2016. The purpose of the PIRLS field test is to evaluate new assessment items and background questions to ensure that classroom and student sampling procedures proposed for the main study are successful. This submission requests approval for recruiting for the 2015 field test and 2016 main study; conducting the 2015 field test data collection; and a description of the overarching plan for all of the phases of the data collection, including the 2016 main study.

Dated: September 30, 2014.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–23641 Filed 10–2–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Announcement of an Open Public Hearing

AGENCY: National Advisory Council on Indian Education (NACIE or Council), Department of Education.

ACTION: Announcement of an Open Public Hearing.

SUMMARY: This notice sets forth the schedule of an upcoming public hearing conducted by a subcommittee comprised of NACIE members. The purpose of this public hearing is to receive public comments and/or recommendations and/or suggestions to the Council on the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

DATES: The NACIE public hearings will be held on:

October 15, 2014–9:30 a.m. to 11:30 a.m. Alaska Time Zone (AKDT)

October 15, 2014–1:30 p.m. to 3:30 p.m. Alaska Time Zone (AKDT)

October 16, 2014–9:00 a.m. to 11:00 a.m. Alaska Time Zone (AKDT)

October 16, 2014–1:30 p.m. to 3:30 p.m. Alaska Time Zone (AKDT)

The public hearing meeting location in Anchorage, Alaska is: Hotel Captain Cook, Voyager Room, 939 W 5th Ave, Anchorage, AK 99501, Phone: (907) 276–6000 or (800)-843–1950, Fax: (907) 343–2298.

ADDRESSES: U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Ave. SW., Room 3E205, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Jenelle Leonard, Designated Federal Official, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: 202–205–2161. Fax: 202–205–5870.

SUPPLEMENTARY INFORMATION: NACIE's Statutory Authority and Function: The National Advisory Council on Indian Education is authorized by § 7141 of the Elementary and Secondary Education Act. The Council is established within the Department of Education to advise the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or programs that may benefit Indian children or adults, including any program established under Title VII, Part A of the Elementary and Secondary Education Act. The Council submits to the Congress, not later than June 30 of each year, a report on the activities of the Council that includes recommendations the Council considers appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

One of the Council's responsibilities is to develop and provide recommendations to the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction that can benefit Indian children or adults participating in any

program which could benefit Indian children. The purpose of the scheduled listening sessions is for the designated NACIE Subcommittee members to conduct a series of listening sessions in conjunction with the National Indian Education Association's Annual Conference. The Conference participants and the general public are invited to provide public comments. The public comments and input will serve to inform the NACIE as they develop recommendations to the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or programs that may benefit Indian children or adults, including any program established under Title VII, Part A of the Elementary and Secondary Education Act, and conduct discussions on the development of the report to Congress that should be submitted no later than June 30, of each year.

To sign up to provide comments and RSVP, access the NACIE Web site at *WWW.NACIE–ED.ORG* beginning October 8, 2014.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or material in alternative format) should notify Jenelle Leonard at (202) 205–2161, no later than Wednesday, October 8, 2014. We will make every attempt to meet requests for accommodations after this date, but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Speakers will be allowed to provide comments for no more than five (5) minutes. Comments should pertain to the work of NACIE and/or the Office of Indian Education.

Access to Records of the Meeting: The Department will post the official report of the hearings on the NACIE Web site 21 days after the meeting. Pursuant to the FACA, the public may also inspect the materials at the Office of Indian Education, United States Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Monday-Friday, 8:30 a.m. to 5:00 p.m. Eastern Standard Time or by emailing *TribalConsultation@ed.gov* or by calling (202) 205–2161 to schedule an appointment.

Reasonable Accommodations: The hearing site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice by or no later than October 8, 2014. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: The National Advisory Council on Indian Education is authorized by Section 7141 of the Elementary and Secondary Education Act. The Council is established within the Department of Education to advise the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or programs that may benefit Indian children or adults, including any program established under Title VII, Part A of the Elementary and Secondary Education Act.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2014–23612 Filed 10–2–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Request for Comments on Draft Solicitation for Advanced Nuclear Energy Projects

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability and request for comments.

SUMMARY: The Loan Programs Office (LPO) of the Department of Energy (DOE) announces availability of a draft of a potential future solicitation for Federal Loan Guarantees for Advanced Nuclear Energy Projects. LPO invites comments regarding the draft of the potential future solicitation.

DATES: Comments regarding the draft of the potential future solicitation must be received on or before November 3, 2014.

ADDRESSES: Written comments may be sent to Peter W. Davidson, Executive Director, Loan Programs Office, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. The draft solicitation is available on LPO's Web site at *http://www.lgprogram.energy.gov/*.

FOR FURTHER INFORMATION CONTACT: Peter W. Davidson, *LPO.NuclearSolicitation.Comments@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE is considering a potential future solicitation for Federal Loan Guarantees for Advanced Nuclear Energy Projects. Should DOE choose to proceed with such a solicitation, applicants would be invited to apply for loan guarantees from DOE to finance projects and facilities located in the United States that employ innovative advanced nuclear energy (''Advanced Nuclear Energy Projects''). DOE may make up to Twelve Billion Six Hundred Million Dollars ($12,600,000,000) in loan guarantee authority available under the proposed solicitation for Advanced Nuclear Energy Projects. Of that amount, $2,000,000,000 is available exclusively for advanced nuclear facilities for the ''front-end'' of the nuclear fuel cycle. The remaining $10,600,000,000 is available for nuclear power facilities.

LPO is announcing a draft of a potential future solicitation for Federal Loan Guarantees for Advanced Nuclear Energy Projects. LPO invites comments regarding the draft of the potential future solicitation.

Statutory Authority: Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511 et seq.).

Issued in Washington, DC, on September 29, 2014.

April G. Stephenson,

Chief Operating Officer, Loan Programs Office.

[FR Doc. 2014–23608 Filed 10–2–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2839–014]

Village of Lyndonville Electrical Department; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 2839–014

c. *Date Filed:* May 27, 2014

d. *Submitted By:* Village of Lyndonville Electrical Department (Lyndonville)

e. *Name of Project:* Great Falls Hydroelectric Project

f. *Location:* On the Passumpsic River, in Caledonia County, Vermont. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations

h. *Potential Applicant Contact:* Kenneth Mason, Village of Lyndonville Electrical Department, 119 Park Avenue, P.O. Box 167, Lyndonville, VT 05851; (802) 626–3366.

i. *FERC Contact:* Bill Connelly at (202) 502–8587; or email at *william.connelly@ferc.gov.*

j. Lyndonville filed its request to use the Traditional Licensing Process on May 27, 2014. Lyndonville provided public notice of its request on June 10, 2014. In a letter dated September 23, 2014, the Director of the Division of Hydropower Licensing approved Lyndonville's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402. We are also initiating consultation with the Vermont State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Lyndonville as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Lyndonville filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2839. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by May 31, 2017.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: September 29, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–23621 Filed 10–2–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 77–269]

Pacific Gas and Electric Company; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Application for Temporary Variance of Minimum Flow Requirement.

b. *Project No.:* 77–269.

c. *Date Filed:* September 19, 2014.

d. *Applicant:* Pacific Gas and Electric Company (licensee).

e. *Name of Project:* Potter Valley Project.

f. *Location:* Eel River and East Fork Russian River in Lake and Mendocino Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Neva Geldard, License Coordinator, Pacific Gas and Electric Company, Mail Code: N13E, P.O. Box 770000, San Francisco, CA 94177.

i. *FERC Contact:* Mr. John Aedo, (415) 369–3335, or *john.aedo@ferc.gov.*

j. Deadline for filing comments, motions to intervene, protests, and recommendations is 30 days from the issuance date of this notice by the Commission (October 29, 2014). The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–77–269) on any comments, motions to intervene, protests, or recommendations filed.

k. Description of Request: The licensee requests a temporary variance of the minimum flow requirement in the East Branch Russian River. The licensee states that it is planning to conduct repairs to project works, including: Replacing the penstock shutoff valves, replacing the standpipe connection, and installing penstock protection. In order to complete the work, the licensee is requesting a temporary variance of its Dry year minimum flow requirement of 35 cubic feet per second (cfs) between November 1, 2014 and March 15, 2015. During this time, the licensee proposes to release flows through a conduit into a seasonal creek that is a tributary to the East Branch Russian River immediately downstream of the project powerhouse. The licensee states that during the repair period, it would release a minimum flow of 20 cfs from the conduit into the East Branch Russian River, which would include the release of up to 5 cfs for the Potter Valley Irrigation District. As the project is currently operating according to the Dry year criteria, the licensee states that if

site conditions reach a Critically Dry year status, it would instead, maintain the license-required minimum flow of 5 cfs. Upon completion of construction, the licensee states that it would notify the resource agencies and return to the license-required flows.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: September 29, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–23620 Filed 10–2–14; 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 exempt wholesale generator filings:

Docket Numbers: EG14–108–000.

Applicants: Roundtop Energy, LLC.

Description: Self-Certification of EWG Status of Roundtop Energy LLC.

Filed Date: 9/26/14.

Accession Number: 20140926–5078.

Comments Due: 5 p.m. ET 10/17/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–1485–003.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment per 35.17(b): Errata to Motion to Hold Captioned Docket in Abeyance under Docket No. ER14–1485 to be effective 12/31/9998.

Filed Date: 9/26/14.

Accession Number: 20140926–5146.

Comments Due: 5 p.m. ET 10/17/14.

Docket Numbers: ER14–2140–002.

Applicants: Mulberry Farm, LLC.

Description: Tariff Amendment per 35.17(b): Suppl No 2 to Baseline Filing—MBR Tariff Mulberry Farm 092514 to be effective 10/1/2014.

Filed Date: 9/26/14.

Accession Number: 20140926–5000.

Comments Due: 5 p.m. ET 10/6/14.

Docket Numbers: ER14–2141–002.

Applicants: Selmer Farm, LLC.

Description: Tariff Amendment per 35.17(b): Amdmt to Baseline—Selmer Farm, LLC 092514 to be effective 9/29/2014.

Filed Date: 9/25/14.

Accession Number: 20140925–5152.

Comments Due: 5 p.m. ET 10/6/14.

Docket Numbers: ER14–2187–000; ER14–2187–003.

Applicants: Grand Ridge Energy Storage LLC.

Description: Fourth supplement to June 16, 2014 Grand Ridge Energy Storage LLC submits tariff filing.

Filed Date: 9/26/14.

Accession Number: 20140926–5119.

Comments Due: 5 p.m. ET 10/17/14.

Docket Numbers: ER14–2578–000.

Applicants: El Paso Electric Company.

Description: Tariff Cancellation per 35.17(a): OATT Additional Changes to Order 792 to be effective N/A.

Filed Date: 9/25/14.

Accession Number: 20140925–5145.

Comments Due: 5 p.m. ET 10/16/14.

Docket Numbers: ER14–2885–001.

Applicants: Seiling Wind Interconnection Services, LLC.

Description: Tariff Amendment per 35.17(b): Amendment to Seiling Int, Seiling I and Seiling II Shared Facilities Agreement to be effective 10/1/2014.

Filed Date: 9/25/14.

Accession Number: 20140925–5153.

Comments Due: 5 p.m. ET 10/16/14.

Docket Numbers: ER14–2940–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revisions to OATT re: VRR Curve Triennial Review to be effective 12/1/2014.

Filed Date: 9/25/14.

Accession Number: 20140925–5150.

Comments Due: 5 p.m. ET 10/16/14.

Docket Numbers: ER14–2941–000.

Applicants: Southern California Edison Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Amended SGIAs and Distribution Service Agmts with Golden Springs to be effective 9/27/2014.

Filed Date: 9/26/14.

Accession Number: 20140926–5002.

Comments Due: 5 p.m. ET 10/17/14.

Docket Numbers: ER14–2942–000.

Applicants: Avista Corporation.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): FERC Rate Schedule No. 184 revised 2014 to be effective 10/1/2014.

Filed Date: 9/26/14.

Accession Number: 20140926–5003.

Comments Due: 5 p.m. ET 10/17/14.

Docket Numbers: ER14–2943–000.

Applicants: Avista Corporation.

Description: Initial rate filing per 35.12 Avista Corp Service Agreement No. 544 to be effective 10/1/2014.

Filed Date: 9/26/14.

Accession Number: 20140926–5005.

Comments Due: 5 p.m. ET 10/17/14.

Docket Numbers: ER14–2944–000.

Applicants: NorthWestern Corporation.

Description: Initial rate filing per 35.12 SA 724 Utilities Agreement with Montana DOT re Kershaw Turn Lanes Project to be effective 11/25/2014.

Filed Date: 9/26/14.

Accession Number: 20140926–5117.

Comments Due: 5 p.m. ET 10/17/14.

Docket Numbers: ER14–2945–000.

Applicants: Roundtop Energy LLC.

Description: Initial rate filing per 35.12 Roundtop Energy LLC MBR Tariff Application to be effective 11/25/2014.

Filed Date: 9/26/14.

Accession Number: 20140926–5118.

Comments Due: 5 p.m. ET 10/17/14.

Docket Numbers: ER14–2946–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Original Service Agreement No. 3939; Queue Z2–019 to be effective 8/28/2014.

Filed Date: 9/26/14.

Accession Number: 20140926–5122.

Comments Due: 5 p.m. ET 10/17/14.

Docket Numbers: ER14–2947–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): SA 605 Second Revised—NITSA with Bonnevilla Power Administration to be effective 10/1/2014.

Filed Date: 9/26/14.

Accession Number: 20140926–5144.

Comments Due: 5 p.m. ET 10/17/14.

Docket Numbers: ER14–2948–000.

Applicants: Tucson Electric Power Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Gila River Power Station Ownership Agreement to be effective 11/25/2014.

Filed Date: 9/26/14.

Accession Number: 20140926–5145.

Comments Due: 5 p.m. ET 10/17/14.

Docket Numbers: ER14–2949–000.

Applicants: Puget Sound Energy, Inc.

Description: Initial rate filing per 35.12 Air Products TX Interconnection, NITSA & NOA Agreements to be effective 9/1/2014.

Filed Date: 9/26/14.

Accession Number: 20140926–5147.

Comments Due: 5 p.m. ET 10/17/14.

Docket Numbers: ER14–2950–000.

Applicants: Midcontinent Independent System Operator, ALLETE, Inc.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2014–09–26_SA 2700 Great Northern Transmission Line MPFCA to be effective 11/25/2014.

Filed Date: 9/26/14.

Accession Number: 20140926–5148.

Comments Due: 5 p.m. ET 10/17/14.

Docket Numbers: ER14–2951–000.

Applicants: Wisconsin Electric Power Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): FERC Electric Tariff Rate Schedule No. 122 to be effective 12/1/2014.

Filed Date: 9/26/14.

Accession Number: 20140926–5150.

Comments Due: 5 p.m. ET 10/17/14.

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 26, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–23619 Filed 10–2–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR14–55–000.

Applicants: Arkansas Oklahoma Gas Corporation.

Description: Request for Limited Waiver of Requirement to Submit Informational Rate Filing and Continued Limited Waiver of Form 549–D.

Filed Date: 9/23/14.

Accession Number: 20140923–5183.

Comments Due: 5 p.m. ET 10/14/14. 284.123(g) Protests Due:

Docket Numbers: RP14–1277–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: § 4(d) rate filing per 154.403(d)(2): LNG Fuel Tracker Filing 2014 to be effective 11/1/2014.

Filed Date: 9/25/14.

Accession Number: 20140925–5109.

Comments Due: 5 p.m. ET 10/7/14.

Docket Numbers: RP14–1278–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: § 4(d) rate filing per 154.204: Continental Resources' Negotiated Rate to be effective 10/1/2014.

Filed Date: 9/25/14.

Accession Number: 20140925–5121.

Comments Due: 5 p.m. ET 10/7/14.

Docket Numbers: RP14–1279–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: § 4(d) rate filing per 154.204: Volume No. 2—Statoil Natural Gas LLC SP102661 to be effective 11/1/2014.

Filed Date: 9/25/14.

Accession Number: 20140925–5151.

Comments Due: 5 p.m. ET 10/7/14.

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.

Filings in Existing Proceedings

Docket Numbers: RP14–1196–001.

Applicants: Gas Transmission Northwest LLC.

Description: Compliance filing per 154.203: Compliance to RP14–1196–000 to be effective 9/22/2014.

Filed Date: 9/26/14.

Accession Number: 20140926–5018.

Comments Due: 5 p.m. ET 10/8/14.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR § 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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 26, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–23528 Filed 10–2–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R08–OAR–2014–0236; FRL–9917–35–Region–8]

Adequacy Determination for Lamar and Steamboat Springs PM_{10} Maintenance Plans' Motor Vehicle Emissions Budgets for Transportation Conformity Purposes; State of Colorado

AGENCY: Environmental Protection Agency.

ACTION: Notice of adequacy.

SUMMARY: In this notice, the Environmental Protection Agency (EPA) is notifying the public that the Agency has found the following adequate for transportation conformity purposes: The ''Revised PM_{10} Maintenance Plan for the Lamar Attainment/Maintenance Area'' and its motor vehicle emissions budget, and the ''Revised PM_{10} Maintenance Plan for the Steamboat Springs Attainment/Maintenance Area'' and its motor vehicle emissions budget. As more fully explained in the Supplementary Information section of this notice, this finding will affect future transportation conformity determinations.

DATES: This finding is effective on October 20, 2014.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number (303) 312–6479, fax number (303) 312–6064, or email *russ.tim@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document, whenever ''we,'' ''us,'' or ''our,'' are used, we mean EPA. Whenever ''State'' is used, we mean the State of Colorado.

Transportation conformity is required by section 176(c) of the Clean Air Act (CAA). The conformity rule provisions at 40 CFR 93 require that transportation plans, programs, and projects conform to a State Implementation Plan (SIP) and establish the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the National Ambient Air Quality Standard (NAAQS).

The criteria by which we determine whether a SIP revision's motor vehicle emissions budget (MVEB) is adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4), which was promulgated August 15, 1997 (62 FR 43780). We described our process for determining the adequacy of submitted SIP MVEBs in our July 1, 2004 Transportation Conformity Rule Amendments (69 FR 40004). We used these resources in making our adequacy determinations announced in this notice.

This notice is simply an announcement of findings that we have already made and are as described below:

Lamar (PM_{10}): The State submitted the ''Revised PM_{10} Maintenance Plan for the Lamar Attainment/Maintenance Area'' [1] on May 13, 2013. The State prepared the submittal to meet the requirements of section 175A(b) of the CAA for a second 10-year maintenance plan. We posted the ''Revised PM_{10} Maintenance Plan for the Lamar Attainment/Maintenance Area'' for adequacy review on EPA's transportation conformity Web site on November 15, 2013. The public comment period closed on December 16, 2013, and we did not receive any comments in response to the adequacy review posting (see *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm#lamar-co*). EPA sent a letter to the Colorado Department of Public Health and Environment (CDPHE) on January 23, 2014, stating that the submitted Lamar PM_{10} second 10-year maintenance plan and the 2025 PM_{10} MVEB were adequate for transportation conformity purposes.

Steamboat Springs (PM_{10}): The State submitted the ''Revised PM_{10} Maintenance Plan for the Steamboat Springs Attainment/Maintenance Area'' on May 11, 2012. The State prepared the submittal to meet the requirements of section 175A(b) of the CAA for a second 10-year maintenance plan. We posted the ''Revised PM_{10} Maintenance Plan for the Steamboat Springs Attainment/Maintenance Area'' for adequacy review on EPA's transportation conformity Web site on November 15, 2013. The public comment period closed on December 16, 2013, and we did not receive any comments in response to the adequacy review posting (see *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm#steam-spr-co*). EPA sent a letter to the CDPHE on January 23, 2014, stating that the submitted Steamboat Springs PM_{10} second 10-year maintenance plan and the 2024 PM_{10} MVEB were adequate for transportation conformity purposes.

For the Lamar PM_{10} maintenance area, the MVEB we found adequate is 764 pounds of PM_{10} per day in 2025. Following the effective date listed in the **DATES** section of this notice, the Colorado Department of Transportation and the U.S. Department of Transportation are required to use this motor vehicle emissions budget for future transportation conformity determinations for projects in the Lamar PM_{10} maintenance area. For the Steamboat Springs PM_{10} maintenance area, the MVEB we found adequate is 1,103 pounds of PM_{10} per day in 2024. Following the effective date listed in the **DATES** section of this notice, the Colorado Department of Transportation and the U.S. Department of Transportation are required to use this motor vehicle emissions budget for future transportation conformity determinations for projects in the Steamboat Springs PM_{10} maintenance area.

Please note that our adequacy review described above is separate from our rulemaking action on the two maintenance plans discussed above and should not be used to prejudge our ultimate approval or disapproval of each of the SIP revisions. Even if we find a maintenance plan and its MVEB adequate for transportation conformity purposes now, we may later find it necessary to disapprove the SIP revision. Should this situation arise, we would then revisit our adequacy finding.

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

Dated: September 4, 2014.

Shaun L. McGrath,

Regional Administrator, Region 8.

[FR Doc. 2014–23636 Filed 10–2–14; 8:45 am]

BILLING CODE 6560–50–P

[1] PM_{10} refers to particulate matter less than or equal to 10 microns in diameter.

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9017–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements
Filed 09/22/2014 Through 09/26/2014
Pursuant to 40 CFR 1506.9

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20140282, Final EIS, NPS, TX, Big Thicket National Preserve Final General Management Plan, Review Period Ends: 11/03/2014, Contact: Doug Neighbor 409–951–6801.

EIS No. 20140283, Final EIS, NPS, TX, Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument General Management Plan, Review Period Ends: 11/03/2014, Contact: Arlene Wimer 806–857–0309.

EIS No. 20140284, Draft Supplement, FHWA, VA, U.S. Route 460 Corridor, Comment Period Ends: 11/17/2014, Contact: Edward S. Sundra, 804–775–3357. The U.S. Department of Transportation's Federal Highway Administration, the U.S. Army Corps of Engineers, and the Virginia Department of Transportation are joint lead agencies for the above project.

EIS No. 20140285, Final EIS, USFS, CA, California Pacific Electricity Company 625 and 650 Electrical Line Upgrade Project, Review Period Ends: 11/03/2014, Contact: Robert Rodman 530–543–2613.

EIS No. 20140286, Draft EIS, USFS, CA, Jess Project, Klamath National Forest, Comment Period Ends: 11/17/2014, Contact: Angie Bell 530–842–6131.

EIS No. 20140287, Draft EIS, USFS, WA, Mt. Baker-Snoqualmie Invasive Plant Management, Comment Period Ends: 11/17/2014, Contact: Phyllis Reed 360–436–2332.

EIS No. 20140288, Draft EIS, BPA, OR, WA, Walla Walla Basin Spring Chinook Hatchery Program, Comment Period Ends: 11/24/2014, Contact: Donald L. Rose 503–230–3796.

Amended Notices

EIS No. 20140198, Draft EIS, NMFS, WA, Two Joint State and Tribal Resource Management Plans for Puget Sound Salmon and Steelhead Hatchery Programs, Comment Period Ends: 11/24/2014, Contact: Steve Leider 360–753–4650. Revision to the FR Notice Published 07/25/2014; Extending the Comment Period from 10/23/2014 to 11/24/2014.

EIS No. 20140236, Final EIS, USACE, WA, Lower Snake River Programmatic Sediment Management Plan, Review Period Ends: 09/22/2014, Contact: Sandra Shelin 509–527–7265. Revision to FR Notice Published 09/26/2014; Correction to the Review Period, which ended on 09/22/2014 and not 09/29/2014.

Dated: September 30, 2014.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2014–23639 Filed 10–2–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2014; FRL–9917–45–ORD]

Notice of Availability of Guidance for Applying Quantitative Data To Develop Data-Derived Extrapolation Factors for Interspecies and Intraspecies Extrapolation

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of *Guidance for Applying Quantitative Data to Develop Data-Derived Extrapolation Factors for Interspecies and Intraspecies Extrapolation* (DDEF Guidance). This document lays out methods for calculation of factors compensating for the application of animal toxicity data to humans (interspecies) and for compensating for sensitive populations (intraspecies). The use of data to conduct these extrapolations rather than rely on default values advances EPA's policy of considering relevant data first when conducting its chemical assessments.

DATES: The document will be available October 3, 2014.

ADDRESSES: The *Guidance for Applying Quantitative Data to Develop Data-Derived Extrapolation Factors for Interspecies and Intraspecies Extrapolation* is available at the EPA Web site *http://www.epa.gov/raf/DDEF/index.htm.*

FOR FURTHER INFORMATION CONTACT: Dr. Michael Broder, Office of the Science Advisor, Mail Code 8105R, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number (202) 564–3393; fax number (202) 564–2070; or email: *broder.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: Historically, EPA has employed default uncertainty factors in its computation of toxicity values (e.g., reference concentrations [RfC] and reference doses [RfD]) to compensate for an absence of data. Default uncertainty factors have historically been based on policy or regulatory positions rather than on empirical data applicable to the chemical of interest. Among the uncertainty factors used in EPA assessments are those compensating for a lack of information on how well animal models used in toxicity studies mimic humans (interspecies) and differences in response between the majority of the population (central tendency) compared with the sensitive individual (intraspecies). With the publication of *An Examination of EPA Risk Assessment Principles and Practices* ''Staff Paper'' published in 2004, and EPA's *Guidelines for Carcinogen Risk Assessment,* published in 2005, the Agency announced its policy of considering all relevant data before applying default values.

In 2011 EPA published *Recommended Use of Body Weight$^{3/4}$ as the Default Method in Derivation of the Oral Reference Dose.* In that guidance EPA listed the optimal approach as using a physiologically-based pharmacokinetic or other biologically-based model with the default approach using the ratio of body weights raised to the ¾ power.

The DDEF Guidance lays out a computational process for using chemical-specific data on toxicokinetics (adsorption, metabolism, distribution and excretion) and toxicodynamics (response of the tissue to the active form of the agent).

It should be noted that the DDEF Guidance is the first EPA product to provide a method both for quantitative determination of relative sensitivity of the pharmacodynamic response in an assessment and for empirical determination of intraspecies sensitivity. As such, this method provides a valuable tool for identifying and quantifying sensitive populations and lifestages.

Dated: August 21, 2014.

Robert Kavlock,

Interim EPA Science Advisor.

[FR Doc. 2014–23637 Filed 10–2–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 14–157; DA 14–1354]

Termination of Dormant Proceedings

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission, via the Consumer and Governmental Affairs Bureau (CGB), seeks comment on whether certain docketed Commission proceedings should be terminated as dormant. The Commission's procedural rules, which were revised to streamline and improve the agency's docket management practices, delegate authority to the Chief, CGB to periodically review all open dockets and, in consultation with the responsible Bureaus or Offices, to identify those dockets that appear to be candidates for termination.

DATES: Comments are due on or before November 3, 2014, and reply comments are due on or before November 17, 2014.

ADDRESSES: Interested parties may submit comments, identified by [CG Docket No. 14–157], by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS) at *http://fjallfoss.fcc.gov/ecfs2/.* Filers should follow the instructions provided on the Web site for submitting comments. In completing the transmittal screen, ECFS filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, which in this instance is CG Docket No. 14–157.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express mail and Priority mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Gayle Radley Teicher, Consumer and Governmental Affairs Bureau at (202) 418–1515 or by email at *gayle.teicher@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Public Notice, *Consumer and Governmental Affairs Bureau Seeks Comment on Termination of Certain Proceedings as Dormant,* document DA 14–1354, released on September 18, 2014 in CG Docket No. 14–157.

The full text of document DA 14–1354 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160, fax: (202) 488–5563, or Internet: *www.bcpiweb.com.* Document DA 14–1354 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/document/cgb-seeks-comment-termination-certain-proceedings-dormant-1.* The spreadsheet associated with document DA 14–1354 listing the proceedings proposed for termination for dormancy is available in Word or Portable Document Format at *http://www.fcc.gov/article/da-14-1354a2.*

Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the respective dates indicated in the **DATES** section of this document.

Pursuant to 47 CFR 1.1200 *et seq.,* this matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Synopsis: On February 4, 2011, the Commission released document FCC 11–16, *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization, Report and Order,* 76 FR 24383, May 2, 2011, which revised portions of its Part 1—Practice and Procedure and Part 0—Organizational rules.

The revised rules, in part, delegate authority to the Chief, CGB to periodically review all open dockets and, in consultation with the responsible Bureaus or Offices, to identify those dockets that appear to be candidates for termination. These candidates include dockets in which no further action is required or contemplated, as well as those in which no pleadings or other documents have been filed for several years. However, the Commission specified that proceedings in which petitions addressing the merits are pending should not be terminated absent the

parties' consent. The termination of a dormant proceeding also includes dismissal as moot of any pending petition, motion, or other request for relief that is procedural in nature or otherwise does not address the merits of the proceeding.

Prior to the termination of any particular proceeding, the Commission was directed to issue a Public Notice identifying the dockets under consideration for termination and affording interested parties an opportunity to comment. Thus, CGB has identified the dockets for possible termination in document DA 14–1354, available at *http://www.fcc.gov/document/cgb-seeks-comment-termination-certain-proceedings-dormant-1.*

Federal Communications Commission.

Kris Monteith,

Acting Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2014–23643 Filed 10–2–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 14–28; DA 14–1410]

Panelist Information for Open Internet Roundtables

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission released a public notice announcing panelist names and other information for a series of roundtables. The intended effect of this document is to make the public aware of the event and the agenda for the roundtables.

DATES: Tuesday, October 7, 2014, 9:00 a.m.–12:30 p.m.

ADDRESSES: Federal Communications Commission, Commission Meeting Room (TW–C305), 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew Erber, Office of General Counsel at (202) 418–0678 or by email at *Andrew.Erber@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in GN Docket No. 14–28, DA 14–1410 released September 29, 2014. The complete text in this document is available for public inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is available on the Commission's Web site at *http://www.fcc.gov.*

The roundtable will be free and open to the public, and the FCC also will stream them live at *http://www.fcc.gov/live.* The location of the roundtable will be the Commission Meeting Room (TW–C305), 445 12th Street SW., Washington, DC 20554. The FCC will make available an overflow room for those in-person attendees who cannot be accommodated in the Commission Meeting Room. We advise persons planning to attend the roundtables in person to leave sufficient time to enter through building security.

The FCC encourages members of the public to submit suggested questions in advance and during the roundtables by email to *roundtables@fcc.gov* or on Twitter using the hashtag #FCCRoundtables. Please note that by submitting a question, you will be making a filing in an official FCC proceeding. All information submitted, including names, addresses, and other personal information contained in the message, may be publicly available online.

Reasonable accommodations for people with disabilities are available upon request. The request should include a detailed description of the accommodation needed and contact information. We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Proposed Agenda

The Office of General Counsel of the Federal Communications Commission (FCC) provides panelist names and other information about the final event in the Open Internet roundtable series: ''Internet Openness and the Law,'' which will take place on October 7, 2014. This roundtable was previously announced in a Public Notice. At that time, it was unclear whether the roundtable would be a ''meeting'' of the Commission. As such, that Notice was not published in the **Federal Register**. This Notice shall serve as notice that a quorum of Commissioners may be present at the roundtable, in compliance with part 0, subpart F of the Commission's rules. This Notice does not, however, change the ''permit-but-disclose'' status of the *Open Internet* proceeding under the Commission's *ex parte* rules.

Internet Openness and the Law

9:00–9:15 a.m.—Welcome and Opening Remarks

9:15–10:45 a.m.—Roundtable 1: Sources of Legal Authority

This roundtable will discuss the sources of authority on which the Commission could ground Open Internet rules, including a range of approaches relying on section 706, Title II, and other possible sources of authority.

Panelists:

Mark Cooper, Director of Research, Consumer Federation of America

Gus Hurwitz, Assistant Professor of Law, Nebraska College of Law

Pantelis Michalopoulos, Partner, Steptoe & Johnson LLP

Thomas Navin, Partner, Wiley Rein LLP

Nuala O'Connor, President and CEO, Center for Democracy and Technology

Tim Wu, Professor of Law, Columbia Law School

Moderators:

Jonathan Sallet, General Counsel, FCC

Stephanie Weiner, Special Advisor to the Chairman on Internet Law and Policy & Associate General Counsel, FCC

11:00 a.m.–12:30 p.m.—Roundtable 2: Construction of Legally Sustainable Rules

This roundtable will consider additional legal issues, including constitutional considerations, the nature of common-carriage regulation, and approaches to agency rulemaking and adjudication using tools like prescriptive rules, legal standards, prohibitions, and presumptions to protect and promote Internet openness.

Panelists:

Marvin Ammori, Fellow, New America Foundation

Anne Boyle, Commissioner, Nebraska Public Service Commission

Fred Campbell, Director, Center for Boundless Innovation in Technology

Julia Johnson, Chair, Minority Media & Telecommunications Council

Tejas Narechania, Julius Silver Research Fellow, Columbia Law School

John Windhausen, Jr., President, Telepoly Consulting

Federal Communications Commission.

Stephanie Weiner,

Associate General Counsel.

[FR Doc. 2014–23644 Filed 10–2–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposal to extend for an additional three years its OMB clearance for the information collection requirements contained in its Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising (''Franchise Rule'' or ''Rule''). That clearance expires on December 31, 2014.

DATES: Comments must be submitted by November 3, 2014.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Franchise Rule, PRA Comment, FTC File No. P094400'' on your comment. File your comment online at *https://ftcpublic.commentworks.com/ftc/franchiserulePRA2* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Craig Tregillus, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Mailstop CC–8528, Washington, DC 20580, (202) 326–2970.

SUPPLEMENTARY INFORMATION:

Title: Franchise Rule, 16 CFR Part 436.

OMB Control Number: 3084–0107.

Type of Review: Extension of currently approved collection.

Abstract: On July 15, 2014, the Commission sought comment on the information collection requirements associated with the Franchise Rule. 79 FR 41284. No comments were received. Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501 et seq., the FTC is providing a second opportunity for the public to comment while seeking OMB approval to renew the pre-existing clearance for the Rule.

Estimated Annual Burden: 16,750 hours.

Estimated Number of Respondents, Estimated Average Burden per Year per Respondent: (250 new franchisors × 30 hours of annual disclosure burden) + (2,250 established franchisors × 3 hours of average annual disclosure burden) + (2,500 franchisors × 1 hour of annual recordkeeping burden).[1]

Estimated Annual Labor Cost: $3,597,500.

Estimated Capital or Other Non-Labor Cost: $8,000,000.

Request for Comment: You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before November 3, 2014. Write ''Franchise Rule, PRA Comment, FTC File No. P094400'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential . . . , '' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[2] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/franchiserulePRA2* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Franchise Rule, PRA Comment, FTC File No. P094400'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 3, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of

[1] The details and assumptions underlying these estimates and for estimated annual labor and non-labor costs were set forth in the July 15, 2014 **Federal Register** notice.

[2] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5806.

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2014–23601 Filed 10–2–14; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Secretary's Advisory Committee on Human Research Protections

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a) of the Federal Advisory Committee Act, U.S.C. Appendix 2, notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold a meeting that will be open to the public. Information about SACHRP and the full meeting agenda will be posted on the SACHRP Web site at: *http://www.dhhs.gov/ohrp/sachrp/mtgings/index.html.*

DATES: The meeting will be held on Wednesday, October 29, 2014, from 8:30 a.m. until 5:00 p.m. and Thursday, October 30, 2014, from 8:30 a.m. until 4:00 p.m.

ADDRESSES: Fishers Lane Conference Center, Terrace Level, 5635 Fishers Lane, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jerry Menikoff, M.D., J.D., Director, Office for Human Research Protections (OHRP), or Julia Gorey, J.D., Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; 240–453–8141; fax: 240–453–6909; email address: *SACHRP@hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services and the Assistant Secretary for Health on issues and topics pertaining to or associated with the protection of human research subjects.

The meeting will open to the public at 8:30 a.m., Wednesday, October 29. Following opening remarks from Dr. Jerry Menikoff, Executive Secretary of SACHRP and OHRP Director, and Dr. Jeffrey Botkin, SACHRP Chair, new members will be introduced. The Subpart A Subcommittee (SAS) will then give their report on the new SAS initiative examining informed consent. SAS is charged with developing recommendations for consideration by SACHRP regarding the application of subpart A of 45 CFR part 46 in the current research environment. SAS was established by SACHRP in October 2006. Following this report, an OHRP staff member will present and discuss OHRP data addressing incidental findings and corrective action plans.

On October 30, the Subcommittee on Harmonization (SOH) will discuss their work on the topic of the intersection of the HHS and FDA regulations and ''big data''; this will be followed by a presentation of SOH work on the topic of return of general results. SOH was established by SACHRP at its July 2009 meeting. SOH is charged with identifying and prioritizing areas in which regulations and/or guidelines for human subjects research adopted by various agencies or offices within HHS would benefit from harmonization, consistency, clarity, simplification and/or coordination.

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the SACHRP at the address/phone number listed above at least one week prior to the meeting. Pre-registration is required for participation in the on-site public comment session; individuals may pre-register the day of the meeting. Individuals who would like to submit written statements should email or fax their comments to SACHRP at *SACHRP@hhs.gov* at least five business days prior to the meeting.

Dated: September 29, 2014.

Jerry Menikoff,

Executive Secretary, Secretary's Advisory Committee on Human Research Protections, Director, Office for Human Research Protections.

[FR Doc. 2014–23664 Filed 10–2–14; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10538]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (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.

DATES: Comments must be received by December 2, 2014:

ADDRESSES: When commenting, please reference the document identifier or OMB control number (OCN). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10538 Prior Authorization Form for Beneficiaries Enrolled in Hospice

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Prior Authorization Form for Beneficiaries Enrolled in Hospice; *Use:* The form would be completed by the prescriber or the beneficiary's hospice, or if the prescriber or hospice provides the information verbally to the Part D sponsor, the form would be completed by the sponsor. Information provided on the form would be used by the Part D sponsor to establish coverage of the drug under Medicare Part D. Per statute, drugs that are necessary for the palliation and management of the terminal illness and related conditions are not eligible for payment under Part D. The standard form provides a vehicle for the hospice provider, prescriber or sponsor to document that the drug prescribed is ''unrelated'' to the terminal illness and related conditions. It also gives a hospice organization the option to communicate a beneficiary's change in hospice status and care plan to Part D sponsors. *Form Number:* CMS–10538 (OMB control number 0938-New; *Frequency:* Occasionally; *Affected Public:* Private sector (business or other for-profits); *Number of Respondents:* 424; *Total Annual Responses:* 376,487; *Total Annual Hours:* 31,374. (For policy questions regarding this collection contact Shelly Winston at 410–786–3694).

Dated: September 30, 2014.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–23613 Filed 10–2–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10237, CMS–10357 and CMS–10499]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (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.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by November 3, 2014.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 or Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Part C—

Medicare Advantage and 1876 Cost Plan Expansion Application; *Use:* The information will be collected under the solicitation of Part C applications from MA, EGWP Plan, and Cost Plan applicants and will be used to ensure that applicants meet our requirements and support the determination of contract awards. Participation in all programs is voluntary in nature; only organizations that are interested in participating in the program will respond to the solicitation. The MA–PDs that voluntarily participate in the Part C program must submit a Part D application and successful bid. The package has been revised subsequent to the publication of the 30-day **Federal Register** notice (July 11, 2014; 79 FR 40105). *Form Number:* CMS–10237 (OMB control number: 0938–0935); *Frequency:* Yearly; *Affected Public:* Private sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 566; *Total Annual Responses:* 566; *Total Annual Hours:* 22,625. (For policy questions regarding this collection contact Melissa Staud at 410–786–3669).

2. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection: *Title of Information Collection:* Letter Requesting Waiver of Medicare/Medicaid Enrollment Application Fee; Submission of Fingerprints; Submission of Medicaid Identifying Information; Medicaid Site Visit and Rescreening; *Use:* Section 6401 of the Affordable Care Act (ACA) establishes a number of important payment safeguard provisions. The provisions are designed to improve the integrity of the Medicare, Medicaid, and Children's Health Insurance Programs (CHIP) so as to reduce fraud, waste and abuse. The provisions include the following:

- *Medicare Enrollment Application Fee Waiver Request:* Certain providers and suppliers enrolling in Medicare will be required to submit a fee with their application. Under 42 CFR 424.514, if the applicant believes it has a hardship that justifies a waiver of the application fee, it may submit a letter describing said hardship.
- *Fingerprints:* Certain providers and suppliers enrolling in Medicare, Medicaid, and CHIP will be required to submit fingerprints—either digitally or via the FD–258 standard fingerprint card—of their owners.
- *Suspension of Medicaid Payments:* A State Medicaid agency shall suspend all Medicaid payments to a provider when there is a pending investigation of a credible allegation of Medicaid fraud against an individual or entity, unless it has good cause not to suspend payments or to suspend payment only in part. The State Medicaid agency may suspend payments without first notifying the provider of its intention to suspend such payments. A provider may request, and must be granted, administrative review where State law so requires.
- *Collection of Social Security Numbers (SSNs) and Dates of Birth (DOBs) for Medicaid and CHIP Providers:* The State Medicaid agency or CHIP agency must require that all persons with an ownership or control interest in a Medicaid or CHIP provider submit their SSNs and DOBs.
- *Site Visits for Medicaid-only or CHIP-only providers:* A State Medicaid agency or CHIP agency must conduct on-site visits for providers it determines to be ''moderate'' or ''high'' categorical risk.
- *Rescreening of Medicaid and CHIP Providers Every 5 Years:* A State Medicaid agency or CHIP agency must screen all providers at least every 5 years. This is consistent with the Medicare requirement in current 42 CFR 424.515 that providers and suppliers revalidate their enrollment information at least every 5 years.

Form Number: CMS–10357 (OMB control number: 0938–1137); *Frequency:* On occasion; *Affected Public:* Private sector—Business or for-profit and Not-for-profit institutions and State, Local, or Tribal Governments; *Number of Respondents:* 960,981; *Total Annual Responses:* 960,981; *Total Annual Hours:* 1,248,082. (For policy questions regarding this collection contact Frank Whelan at 410–786–1302).

3. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Public Health Agency/Registry Readiness to Support Meaningful Use; *Use:* The Medicare and Medicaid Electronic Health Record (EHR) Incentive Programs provide incentives for the meaningful use of Certified Electronic Health Record Technology (CEHRT). We defined meaningful use as a set of objectives and measures in either Stage 1 or Stage 2 depending on how long an eligible provider has participated in the program. Both Stage 1 (3 objectives) and Stage 2 (5 objectives) of meaningful use contain objectives and measures that require eligible providers to determine the readiness of public health agencies and registries to receive electronic data from CEHRT. Public comments on the notice of proposed rulemaking for Stage 2 of meaningful use (77 FR 13697) asserted that the burden for each individual eligible provider to determine the readiness of multiple public health agencies and registries could be nearly eliminated if we were to maintain a database on the readiness of public health agencies and registries. In the final rule for Stage 2 of meaningful use (77 FR 53967), we agreed that the burden on eligible providers, public health agencies and registries would be greatly reduced and established that we would create such a database and it would serve as the definitive information source for determining public health agency and registry readiness to receive electronic data associated with the public health meaningful use objectives. The information will be made publicly available on the CMS Web site (*www.cms.gov/EHRincentiveprograms*) in order to provide a centralized repository of this information to eligible providers and eliminate there multiple individual inquiries to multiple public health agencies and registries. *Form Number:* CMS–10499 (OMB control number: 0938—New); *Frequency:* Yearly; *Affected Public:* Private sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 250; *Total Annual Responses:* 250; *Total Annual Hours:* 83. (For policy questions regarding this collection contact Kathleen Connors de Laguna at 410–786–2256).

Dated: September 30, 2014.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–23614 Filed 10–2–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Reunification Procedures for Unaccompanied Alien Children.

OMB No.: 0970–0278.

Description: Following the passage of the 2002 Homeland Security Act (Pub. L. 107–296), the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), is charged with the care and placement of unaccompanied alien children in Federal custody, and implementing a policy for the release of these children, when appropriate, upon the request of suitable sponsors while awaiting immigration proceedings. In order for ORR to make determinations regarding the release of these children, the

potential sponsors must meet certain conditions pursuant to section 462 of the Homeland Security Act and the *Flores* v. *Reno* Settlement Agreement No. CV85–4544–RJK (C.D. Cal. 1997).

The proposed information collection requests information to be utilized by ORR for determining the suitability of a sponsor/respondent for the release of a minor from ORR custody. The proposed instruments are the Family Reunification Application, the Family Reunification Checklist for Sponsors, and the Authorization for Release of Information.

Respondents: Sponsors requesting release of unaccompanied alien children to their custody.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Family Reunification Application	55,200	1	.25	13,800
Family Reunification Checklist for Sponsors	55,200	1	.75	41,400
Authorization for Release of Information	55,200	1	.25	13,800

Estimated Total Annual Burden Hours: 69,000.

ORR has requested emergency processing for this information collection for a period of 90 days from the October 31, 2014 expiration date of these instruments.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–23581 Filed 10–2–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0076]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Electronic Records; Electronic Signatures

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 3, 2014.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0303. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Electronic Records; Electronic Signatures—(OMB Control Number 0910–0303)—Extension

FDA regulations in part 11 (21 CFR part 11) provide criteria for acceptance of electronic records, electronic signatures, and handwritten signatures executed to electronic records as equivalent to paper records. Under these regulations, records and reports may be submitted to FDA electronically provided the Agency has stated its ability to accept the records electronically in an Agency-established public docket and that the other requirements of part 11 are met.

The recordkeeping provisions in part 11 (§§ 11.10, 11.30, 11.50, and 11.300) require the following standard operating procedures to assure appropriate use of, and precautions for, systems using electronic records and signatures: (1) § 11.10 specifies procedures and controls for persons who use closed systems to create, modify, maintain, or transmit electronic records; (2) § 11.30 specifies procedures and controls for persons who use open systems to create, modify, maintain, or transmit electronic records; (3) § 11.50 specifies procedures and controls for persons who use electronic signatures; and (4) § 11.300 specifies controls to ensure the security and integrity of electronic signatures based upon use of identification codes in combination with passwords. The reporting provision (§ 11.100) requires persons to certify in writing to FDA that they will regard electronic signatures used in their systems as the legally binding equivalent of traditional handwritten signatures.

The burden created by the information collection provision of this regulation is a one-time burden associated with the creation of standard operating procedures, validation, and certification. The Agency anticipates the use of electronic media will substantially reduce the paperwork

burden associated with maintaining FDA required records. The respondents are businesses and other for-profit organizations, state or local governments, Federal Agencies, and nonprofit institutions.

In the **Federal Register** of March 28, 2014 (79 FR 17551), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
11.100—General Requirements	4,500	1	4,500	1	4,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
11.10—Controls for closed systems	2,500	1	2,500	20	50,000
11.30—Controls for open systems	2,500	1	2,500	20	50,000
11.50—Signature manifestations	4,500	1	4,500	20	90,000
11.300—Controls for identification codes/passwords	4,500	1	4,500	20	90,000
Total					280,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: September 29, 2014.

Peter Lurie,

Associate Commissioner for Policy and Planning.

[FR Doc. 2014–23551 Filed 10–2–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0360]

Framework for Regulatory Oversight of Laboratory Developed Tests; Draft Guidance for Industry, Food and Drug Administration Staff, and Clinical Laboratories; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Framework for Regulatory Oversight of Laboratory Developed Tests (LDTs).'' This document describes a risk-based framework for addressing the regulatory oversight of a subset of in vitro diagnostic devices (IVDs) referred to as laboratory developed tests (LDTs), which are intended for clinical use and designed, manufactured and used within a single laboratory. This document describes FDA's priorities for enforcing pre- and post-market requirements for LDTs, and the process by which FDA intends to phase in enforcement of FDA regulatory requirements for LDTs over time. This draft guidance is not final, nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by February 2, 2015.

ADDRESSES: An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for single hard copies of the draft guidance document entitled ''Framework for Regulatory Oversight of Laboratory Developed Tests (LDTs)'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–7800.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: *LDTframework@fda.hhs.gov;* or Katherine Serrano, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, Rm. 5646, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 240–402–4217; or Stephen Ripley, Center for Biologics Evaluation and Research Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

In 1976, Congress enacted the Medical Device Amendments (MDA), which amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to create a comprehensive system for the regulation of medical devices intended for use in humans. At that time, the definition of a device was amended to make explicit that it encompassed in vitro diagnostic devices (IVDs): ''The term 'device'. . . means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or

other similar or related article . . .'' (section 201(h) of the FD&C Act (21 U.S.C. 321(h)). The definition of device applies equally to IVDs manufactured by conventional device manufacturers and those manufactured by laboratories. An IVD, therefore, meets the device definition irrespective of where and by whom it is manufactured.

Since the implementation of the MDA of 1976, FDA has exercised enforcement discretion so that the Agency has generally not enforced applicable provisions under the FD&C Act and FDA regulations with respect to laboratory developed tests (LDTs), a subset of in vitro diagnostic devices that are intended for clinical use and designed, manufactured, and used within a single laboratory.

In 1976, LDTs were mostly manufactured in small volumes by local laboratories. Many laboratories manufactured LDTs that were similar to well-characterized, standard diagnostic devices, as well as other LDTs that were intended for use in diagnosing rare diseases or for other uses to meet the needs of a local patient population. LDTs at the time tended to rely on the manual techniques used by laboratory personnel. LDTs were typically used and interpreted directly by physicians and pathologists working within a single institution that was responsible for the patient. In addition, historically, LDTs were manufactured using components that were legally marketed for clinical use (i.e., general purpose reagents, immunohistochemical stains, and other components marketed in compliance with FDA regulatory requirements).

Although some laboratories today still manufacture LDTs in this ''traditional'' manner, the landscape for laboratory testing in general, and LDTs along with it, has changed dramatically since 1976. Today, LDTs are often used in laboratories that are independent of the healthcare delivery entity. Additionally, LDTs are frequently manufactured with components and instruments that are not legally marketed for clinical use and also rely more heavily on complex, high-tech instrumentation and software to generate results and clinical interpretations. Moreover, technological advances have increased the use of diagnostic devices in guiding critical clinical management decisions for high-risk diseases and conditions, particularly in the context of personalized medicine.

Business models for laboratories have also changed since 1976. With the advent of overnight shipping and electronic delivery of information (e.g., device results), a single laboratory can now easily provide device results nationally and internationally. Today, many new LDT manufacturers are large corporations that nationally market a limited number of complex, high-risk devices, in contrast to 1976 when hospital or public health laboratories used a wide range of devices that were generally either well characterized and similar to standard devices; used to diagnose rare diseases; or designed specifically to meet the needs of their local patients. Together, these changes have resulted in a significant shift in the types of LDTs developed, the business model for developing them, and the potential risks they pose to patients.

Because of changes in the complexity and use of LDTs and the associated increased risks, as described earlier, FDA believes the policy of general enforcement discretion towards LDTs is no longer appropriate. To initiate this step toward greater oversight, FDA held a two-day public meeting on July 19 and 20, 2010, to provide a forum for stakeholders to discuss issues and concerns surrounding greater oversight of LDTs. Comments submitted to the public docket for the July public meeting have been addressed, as appropriate, in the draft guidance document.

Once finalized and implemented, this guidance document is intended to provide a risk-based oversight framework that will assure that devices used in the provision of health care, whether developed by a laboratory or a conventional IVD manufacturer, comply with the appropriate levels of regulatory controls needed to assure that they are safe and effective. Under the framework outlined in this guidance document, FDA intends to continue to exercise enforcement discretion for all applicable regulatory requirements for LDTs used solely for forensic (law enforcement) purposes as well as certain LDTs for transplantation when used in certified, high-complexity histocompatibility laboratories. Additionally, FDA intends to exercise enforcement discretion for applicable premarket review requirements and quality systems requirements, but enforce other applicable regulatory requirements, including registration and listing (with the option to provide notification instead) and adverse event reporting, for low risk LDTs (class I devices), LDTs for rare diseases, Traditional LDTs and LDTs for Unmet Needs, as described in the draft guidance document. For other high and moderate risk LDTs, FDA intends to enforce applicable regulatory requirements, including registration and listing (with the option to provide notification instead) and adverse event reporting, and phase in enforcement of premarket and quality system requirements in a risk-based manner.

On July 31, 2014, as required by Section 1143 of the Food and Drug Administration Safety and Innovation Act, FDA provided notification to Congress of its intent to issue this draft guidance and the accompanying draft guidance entitled ''FDA Notification and Medical Device Reporting for Laboratory Developed Test (LDTs)'' (the availability of the accompanying draft guidance is announced elsewhere in this issue of the **Federal Register**). The anticipated details of these draft guidance documents were included in the notification to Congress.

Although FDA was not accepting formal comments on its notification to Congress, the Agency has received informal comments and questions regarding the anticipated details of this draft guidance provided in the notification to Congress. To give everyone an opportunity to provide formal comments on the anticipated details as part of the administrative record, the details of the draft guidance are identical to that which were included in FDA's July 31, 2014, notification to Congress with the exception of the following technical amendments: The definition of companion diagnostic has been updated for consistency with the final guidance on ''In Vitro Companion Diagnostic Devices'' issued on August 6, 2014, and the ''Traditional LDT'' factor regarding whether the LDT is comprised only of components and instruments that are legally marketed has been clarified to more accurately reflect FDA's intent of considering whether the LDT is comprised of only components and instruments that are legally marketed for clinical use.

To provide greater transparency on certain questions and issues that have been raised and to allow for broad public input, in addition to welcoming comments on all aspects of this draft guidance, FDA seeks feedback on the following specific issues:

- Traditional LDTs: In Section D.5.(a) of the draft guidance, FDA has proposed continued enforcement discretion for premarket review and quality system requirements for a category of LDTs called ''Traditional LDTs'' based on whether the device is: (1) an LDT (designed, manufactured and used within a single laboratory); (2) manufactured and used by a health care facility laboratory (such as one located in a hospital or clinic) for a patient that is being diagnosed and/or treated at that same health care facility or within the facility's healthcare system; (3)

comprised only of components and instruments that are legally marketed for clinical use; and (4) interpreted by qualified laboratory professionals without the use of automated instrumentation or software for interpretation. FDA believes that these factors appropriately mitigate risks associated with Traditional LDTs being used on patients so that continued enforcement discretion with respect to premarket review and quality system requirements is appropriate. However, FDA is seeking public feedback as to whether the following three factors may be sufficient to appropriately mitigate risk for this category of tests and whether they may also be sufficient to support continued enforcement discretion in full (i.e., for all regulatory requirements rather than just for premarket review and quality system requirements): (1) the test is an LDT (designed, manufactured and used within a single laboratory); (2) the test makes use of only components and instruments that are legally marketed for clinical use, which have a number of regulatory controls in place, including reporting of adverse events; and (3) the test is interpreted by laboratory professionals who are appropriately qualified and trained as required by the Clinical Laboratory Improvement Amendments regulations (e.g., 42 CFR 493.1449), without the use of automated instrumentation or software for interpretation.

- LDTs Used for Rare Diseases: In Section D.5.(a) of the draft guidance, FDA has proposed continued enforcement discretion for premarket review and quality system requirements for LDTs used for rare diseases, which are those tests that meet the definition of LDT in the guidance (designed, manufactured and used within a single laboratory) and meet the definition of a Humanitarian Use Device (HUD) under 21 CFR 814.102(a)(5). With these factors, FDA has attempted to balance the need to mitigate the risks associated with these tests with their potential benefit for patients. FDA invites stakeholders to provide feedback on the suitability of these factors for LDTs for rare diseases. Further, FDA is seeking feedback on whether a factor other than the HUD definition should be considered, such as a factor based on the number of tests for a rare disease or condition that would likely (based on the prevalence of the condition) be conducted annually in the United States, and if so what the annual number of tests should be for the purpose of defining an LDT as an LDT for a rare disease. FDA also seeks feedback on whether enforcement discretion should be limited to tests that are designed, manufactured and used within a single laboratory.
- Healthcare System: In Section D.5. of the draft guidance, for the categories of tests called ''Traditional LDTs'' and ''LDTs for Unmet Needs,'' FDA has identified factors it intends to consider in continuing to exercise enforcement discretion for premarket review and quality system requirements. One such factor is whether the LDT is both manufactured and used by a healthcare facility laboratory (such as one located in a hospital or clinic) for a patient that is being diagnosed and/or treated at that same healthcare facility or within that facility's healthcare system. To further clarify this factor, the guidance document explains that ''healthcare system'' refers to a collection of hospitals that are owned and operated by the same entity and that share access to patient care information for their patients, such as, but not limited to, drug order information, treatment and diagnosis information, and patient outcomes. While FDA invites feedback on all factors described in Section D.5. of the draft guidance, FDA specifically requests feedback on whether enforcement discretion should be limited, as proposed, to those LDTs that are both manufactured and used by a healthcare facility laboratory. FDA also invites the public to provide feedback to the Agency on which types of facilities would or would not be considered within a healthcare system, or to offer an alternative description of healthcare system for Agency consideration.
- Quality System (QS) Phase-in: In Section D.6. of the draft guidance, FDA has proposed to continue to exercise enforcement discretion with respect to QS regulation requirements, codified in 21 CFR Part 820, until a manufacturer of a given LDT submits a Premarket Approval (PMA) or FDA issues a 510(k) clearance order for the LDT. Under this enforcement policy, the clinical laboratory manufacturing and using the LDT will be responsible for having a quality system in place that meets the minimum requirements codified in 21 CFR Part 820, either at the time of PMA submission (the facility that makes the device must pass an inspection as a condition of PMA approval as a matter of law (21 CFR 814.45(a)(3)), or prior to market launch for cleared devices, as applicable. FDA invites feedback on the timeframe for phase-in enforcement of QS regulation requirements. Specifically, FDA is considering whether those LDTs in the highest-risk category of devices (described in section D.5.(c) of the draft guidance), which FDA intends to generally enforce premarket review requirements 12 months following publication of the final Framework guidance, should remain under enforcement discretion for the design control requirements (21 CFR 820.30(a-h) and (j)) of the QS regulation for up to 24 months after publication of the final guidance.
- Notification: FDA notes that some laboratory networks (i.e., more than one laboratory under the control of the same parent entity) offer the same test in multiple laboratories throughout their network. Although devices in this scenario do not meet FDA's definition of an LDT (i.e., they are not designed, manufactured and used within a single laboratory), FDA would like feedback on whether a single notification from the laboratory network for that test is sufficient, provided that the laboratory network indicates in the notification to FDA that the test is offered at multiple sites. In addition, FDA seeks comment on whether there are certain types of LDTs for which the Agency should neither enforce requirements for registration and listing nor request notification in lieu of registration and listing.
- FDA understands that members of the public may want more clarity around specific issues; such as how laboratory sponsors could interpret what elements make up a medical device, what might constitute the label or labeling for their device, whether or not unique device identifier requirements apply to LDTs, and how laboratory-physician communication about a test and its result would be viewed by FDA, among others. We invite public comment on these issues and any other issues or questions that should be addressed in the guidance, including how that issue or question should be addressed.

Additionally, FDA intends to hold a public webinar in late October, 2014 to summarize the proposed oversight framework and answer clarification questions from stakeholders. The webinar will not require registration and will be announced at least one week in advance on FDA's Web site. It will be recorded and made available on FDA's Web site shortly thereafter.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on oversight of laboratory developed tests. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An

alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov* or the CBER Internet at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.*

Persons unable to download an electronic copy of ''Framework for Regulatory Oversight of Laboratory Developed Tests (LDTs)'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1739 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807 Subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 807 Subpart B and C have been approved under OMB control number 0910–0625; the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338; the collections of information in 21 CFR part 814, subparts B and E, have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 814, subpart H, have been approved under OMB control number 0910–0332; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 806 have been approved under OMB control number 0910–0359; the collections of information in 21 CFR 801 and 21 CFR 809.10 have been approved under OMB control number 0910–0485; and the collections of information in 21 CFR part 803 have been approved under OMB control numbers 0910–0291 and 0910–0437.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Comments will also be accepted at a public meeting, which will be held prior to finalizing this draft guidance. A 2-day meeting is tentatively scheduled for early January, 2015 and will be announced separately in the **Federal Register**.

Dated: September 30, 2014.

Peter Lurie,

Associate Commissioner for Policy and Planning.

[FR Doc. 2014–23596 Filed 9–30–14; 11:15 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0357]

Food and Drug Administration Notification and Medical Device Reporting for Laboratory Developed Tests; Draft Guidance for Industry, Food and Drug Administration Staff, and Clinical Laboratories; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''FDA Notification and Medical Device Reporting for Laboratory Developed Tests (LDTs).'' This draft guidance document is intended to describe the process for clinical laboratories to notify FDA of the laboratory developed tests (LDTs) they manufacture as well as to describe the Medical Device Reporting (MDR) requirements for clinical laboratories manufacturing LDTs. LDTs are those in vitro diagnostic devices that are intended for clinical use and designed, manufactured, and used within a single laboratory. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by February 2, 2015.

ADDRESSES: An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for single hard copies of the draft guidance document entitled ''FDA Notification and Medical Device Reporting for Laboratory Developed Tests (LDTs)'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–7800.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: *LDT framework@fda.hhs.gov;* or Katherine Serrano, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5646, Silver Spring, MD 20993–0002, 240–402–4217; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

In 1976, Congress enacted the Medical Device Amendments (MDA) (Public Law 94–295), which amended the

Federal Food, Drug, and Cosmetic Act (the FD&C Act) to create a comprehensive system for the regulation of medical devices intended for use in humans. At that time, the definition of a device was amended to make explicit that it encompasses in vitro diagnostic devices (IVDs): ''The term 'device' . . . means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article. . . .'' (section 201(h) of the FD&C Act (21 U.S.C. 321(h)). The definition of device applies equally to IVDs manufactured by conventional device manufacturers and those manufactured by laboratories. An IVD, therefore, meets the device definition irrespective of where and by whom it is manufactured.

However, since the implementation of the MDA of 1976, FDA has generally exercised enforcement discretion so that the Agency has generally not enforced applicable provisions under the FD&C Act and FDA regulations with respect to LDTs, a subset of IVDs that are intended for clinical use and designed, manufactured, and used within a single laboratory. Given a changing landscape in terms of the volume, technology, and business model of IVDs offered as LDTs since 1976, in combination with the increasingly important role of diagnostic devices, including LDTs, in critical clinical treatment decisions, the FDA does not believe that generally exercising enforcement discretion with respect to the regulatory requirements for these devices remains appropriate.

Consistent with the draft guidance entitled ''Framework for Regulatory Oversight of Laboratory Developed Tests (LDTs)'' that is being distributed for comment contemporaneously with this document, FDA intends to enforce certain medical device regulatory requirements for LDTs and device-manufacturer requirements for laboratories that manufacture, prepare, propagate, compound, assemble, or process LDTs. FDA intends to collect information regarding LDTs currently being used by laboratories through a notification process. In addition, FDA intends to enforce the requirements under part 803 (21 CFR part 803) for reporting safety issues related to LDTs, to provide a mechanism for collecting information on any known or suspected adverse events related to the use of an LDT. FDA believes that this is the appropriate regulatory oversight approach to adopt initially in achieving the desired public health goal of assuring that these IVDs used in the provision of health care, regardless of the manufacturer, provide reasonable assurance of safety and effectiveness.

FDA welcomes comments on all aspects of this guidance, as well as on the following specific issue: FDA notes that some laboratory networks (i.e., more than one laboratory under the control of the same parent entity) offer the same test in multiple laboratories throughout their network. Although devices in this scenario do not meet FDA's definition of an LDT (i.e., they are not designed, manufactured and used within a single laboratory), FDA would like feedback on whether a single notification from the laboratory network for that test is sufficient, provided that the laboratory network indicates in the notification to FDA that the test is offered at multiple sites. Elsewhere in this issue of the **Federal Register**, FDA is issuing a notice announcing the availability of the draft guidance entitled ''Framework for Regulatory Oversight of Laboratory Developed Tests (LDTs)'' that also identifies specific issues for comment.

Additionally, FDA intends to hold a public webinar in late October 2014 to summarize the proposed oversight framework and answer clarification questions from stakeholders. The webinar will not require registration and will be announced at least 1 week in advance on FDA's Web site. It will be recorded and made available on FDA's Web site shortly thereafter.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on FDA notification and medical device reporting requirements for LDTs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov* or on the CBER Internet at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.*

Persons unable to download an electronic copy of ''FDA Notification and Medical Device Reporting for Laboratory Developed Tests (LDTs)'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1738 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Notification for Laboratory Developed Tests (LDTs).

FDA intends to collect information from laboratories regarding their current LDTs and new LDTs through a notification process. This information collection is needed to classify LDTs and to prioritize enforcement of premarket review requirements for categories of LDTs based on risk using a public process. Specifically, FDA plans to use advisory panels to provide recommendations to the Agency on LDT risks, classification and prioritization of enforcement of applicable regulatory requirements on certain categories of LDTs, as appropriate. Additionally, the notification information will be made

available in part to the laboratory community and interested stakeholders to act as a resource for accessing information on the LDTs currently being used by laboratories. If these data are not collected, FDA and interested stakeholders will not have reliable data on the types of LDTs currently used. Further, because notification data will be used to classify LDTs and prioritize enforcement of premarket review requirements based on risk, it will benefit laboratories to provide the most accurate information possible to ensure that appropriate classification is made.

To facilitate future FDA regulatory activity for LDTs, clinical laboratories should notify FDA of all of the LDTs manufactured, prepared, propagated, compounded, assembled, or processed by their laboratories. To appropriately notify FDA of all LDTs manufactured at an establishment, the owner/operator should provide information on the data elements identified in the following paragraph for each LDT manufactured at their establishment. Laboratory owner/operators with LDTs currently being used in their laboratories should begin to report this information no later than 6 months after publication, in final form, of the ''Framework for Regulatory Oversight of Laboratory Developed Tests (LDTs)'' guidance document referred to in section I. Background. Starting 6 months after publication of the final version of the ''Framework for Regulatory Oversight of Laboratory Developed Tests (LDTs)'' guidance, laboratories that intend to offer new LDTs should provide notification prior to offering the LDT for clinical use. It should be noted that when laboratories make a significant change to the marketed intended use of an LDT for which they have previously provided notification, the LDT will be considered by the FDA to be a new LDT and, therefore, a new notification should be provided prior to offering that LDT for clinical use.

Data Elements to be Reported [1]

- Laboratory Name
- Laboratory Contact Email Address
- Test Name
- Monthly Test Volume
- Intended Use
- Clinical Use of Test
- What is measured or detected (i.e. analyte, measurand, etc.)
- Disease/Condition for which the diagnostic device is indicated
- Patient Population
- Does the patient population include pediatric patients? (<21 years old)
- Sample Type
- Test Method
- Is the test a modification of an FDA cleared/approved test?
- If the test is a modification of an FDA cleared/approved test, what modifications were made?

Respondents to this collection of information are manufacturers of LDTs. FDA estimates the burden of this collection as follows.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FIRST YEAR[1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
LDT Notification—Initial notification	650	1	650	1	650
LDT Notification—Subsequent first year notifications	650	16	10,400	0.5	5,200
Total					5,850

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN SUBSEQUENT YEARS [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
LDT Notification—Subsequent years	650	1	650	0.5	325

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Upon publication of a final guidance based on this draft guidance, FDA expects approximately 650 manufacturers to provide notification information regarding approximately 17 LDTs each. The number of respondents and total number of responses are based on information provided by New York State. Specifically, in July 2014, New York State indicated that it has reviewed 9,800 submissions from 565 labs. While these numbers represent the best estimates available for the number of LDTs currently on the market, FDA acknowledges that additional LDTs may be offered to patients in the United States that are not currently offered in New York State, and therefore, have not undergone review. To take into account the possibility that the number of LDTs and number of labs in New York State understate the totals for the United States, FDA assumes that the nationwide totals are 10 percent higher and, therefore, estimates that there are approximately 11,000 LDTs manufactured in 650 labs. To corroborate our estimate of the total number of responses, i.e., the total number of LDTs currently being offered, we looked at National Institutes of Health Genetic Test Registry data. In June 2014, the registry included approximately 7,600 genetic tests that are not FDA-approved or cleared, but are currently offered. If we assume that genetic tests represent roughly 70 to 80 percent of all LDTs, this supports our estimate of 11,050 LDTs (total annual responses in the first year).

FDA estimates an average of 17 LDTs offered per laboratory based upon the ratio of labs offering LDTs to the number of LDT submissions received by New York State. We therefore estimate that there will be 650 respondents (manufacturers of LDTs) and 17 responses per respondent (LDT notifications) in the first year. This results in 11,050 total annual responses in the first year.

[1] Please refer to Appendix A of the draft guidance document for a more detailed discussion of data elements.

FDA acknowledges that according to the CLIA (Clinical Laboratory Improvement Amendments) program at CMS (August 2014), there are approximately 11,000 CLIA-certified high complexity labs that have the appropriate certifications to manufacture LDTs. However, FDA is not aware of information describing the exact number of certified high complexity laboratories currently offering LDTs. Therefore, FDA has relied upon the information provided by New York State when creating these estimates. FDA acknowledges that, without firm data on the number of labs offering LDTs or the number of tests offered per lab, the estimate of the number of respondents is necessarily uncertain.

After the initial notification, respondents will only notify FDA of new tests or modifications that affect performance or intended use. We estimate the number of tests in subsequent years to be approximately 5 percent of the estimated number of initial notifications.

FDA bases its estimate of the average burden per response on Agency creation of a mock notification. We would expect labs to take up to an hour for their first notification and only 30 minutes for subsequent notifications, due to familiarity with the system.

Therefore, we estimate the total reporting burden to respondents to be 5,850 hours for the first year and 325 hours for subsequent years.

This draft guidance also refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 803 (medical device reporting) have been approved under OMB control numbers 0910–0291 and 0910–0437; the collections of information in 21 CFR part 806 (reports of corrections and removals) have been approved under OMB control number 0910–0359; and the collections of information in 21 CFR part 807, subparts B and C (registration and listing) have been approved under OMB control number 0910–0625.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Comments will also be accepted at a public meeting, which will be held prior to finalizing this draft guidance. A 2-day meeting is tentatively scheduled for early January 2015 and will be announced separately in the **Federal Register**.

Dated: September 29, 2014.

Peter Lurie,

Associate Commissioner for Policy and Planning.

[FR Doc. 2014–23586 Filed 9–30–14; 11:15 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0001]

Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pulmonary-Allergy Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 21, 2014, from 8 a.m. to 4 p.m.

Location: FDA White Oak Campus, Building 31, the Great Room, White Oak Conference Center (Rm. 1503), 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Cindy Hong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *PADAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss supplemental new drug application (sNDA) 203188, ivacaftor oral tablets, submitted by Vertex Pharmaceuticals Inc., for the treatment of cystic fibrosis in patients with an R117H mutation in the cystic fibrosis transmembrane conductance regulator gene.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 14, 2014. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 6, 2014. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will

notify interested persons regarding their request to speak by October 7, 2014.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Cindy Hong at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 26, 2014.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2014–23548 Filed 10–2–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA 2014–N–0001]

Anesthetic and Analgesic Drug Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anesthetic and Analgesic Drug Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 24, 2014, from 8 a.m. to 5 p.m. and November 25, 2014, from 8 a.m. to 12 noon.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Stephanie L. Begansky, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *AADPAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss the risk of serious neurologic adverse reactions associated with epidural steroid injections (ESI) administered to reduce inflammation for pain management. The committee will also consider the efficacy of ESI and the overall risk benefit balance of injecting steroids in the epidural space to treat pain. These considerations will assist the Agency in our discussions of possible regulatory options, including but not limited to changes to the product labeling.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 7, 2014. Oral presentations from the public will be scheduled between approximately 2 p.m. and 3:30 p.m. on November 24, 2014. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 30, 2014. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 31, 2014.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Stephanie L. Begansky at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 26, 2014.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2014–23549 Filed 10–2–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2014–0414]

Cook Inlet Regional Citizens' Advisory Council (CIRCAC) Charter Renewal

AGENCY: Coast Guard, DHS.

ACTION: Notice of recertification.

SUMMARY: The purpose of this notice is to inform the public that the Coast Guard has recertified the Cook Inlet Regional Citizens' Advisory Council (CIRCAC) as an alternative voluntary advisory group for Cook Inlet, Alaska. This certification allows the CIRCAC to monitor the activities of terminal facilities and crude oil tankers under the Cook Inlet Program established by statute.

DATES: This recertification is effective for the period from September 1st, 2014 through August 31, 2015.

FOR FURTHER INFORMATION CONTACT: LT Thomas Pauser Seventeenth Coast Guard District (dpi); Telephone (907)463–2812, email *thomas.e.pauser@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

As part of the Oil Pollution Act of 1990, Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), 33 U.S.C. 2732, to foster a long-term partnership among industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals and oil tankers.

On October 18, 1991, the President delegated his authority under 33 U.S.C 2732 (o) to the Secretary of Transportation in Executive Order 12777, section 8(g) (see 56 FR 54757; October 22, 1991) for purposes of certifying advisory councils, or groups, subject to the Act. On March 3, 1992, the Secretary redelegated that authority to the Commandant of the USCG (see 57 FR 8582; March 11, 1992). The Commandant redelegated that authority to the Chief, Office of Marine Safety, Security and Environmental Protection (G–M) on March 19, 1992 (letter #5402).

On July 7, 1993, the USCG published a policy statement, 58 FR 36504, to clarify the factors that shall be considered in making the determination as to whether advisory councils, or groups, should be certified in accordance with the Act.

The Assistant Commandant for Marine Safety and Environmental Protection (CG–5), redelegated recertification authority for advisory councils, or groups, to the Commander, Seventeenth Coast Guard District on February 26, 1999 (letter #16450).

On September 16, 2002, the USCG published a policy statement, 67 FR 58440, that changed the recertification procedures such that applicants are required to provide the USCG with comprehensive information every three years (triennially). For each of the two years between the triennial application procedure, applicants submit a letter requesting recertification that includes a description of any substantive changes to the information provided at the previous triennial recertification. Further, public comment is not solicited prior to recertification during streamlined years, only during the triennial comprehensive review.

Discussion of Comments

On May 23, 2014 the USCG published a Notice of Availability; request for comments for recertification of Cook Inlet Regional Citizens' Advisory Council in the **Federal Register** (76 FR 1187). We received 54 comments from the public commenting on the proposed action. No public meeting was requested, and none was held. All 54 comments were positive and in support of recertification. These letters in support of the recertification consistently cited CIRCAC's broad representation of the respective community's interests, appropriate actions to keep the public informed, improvements to both spill response preparation and spill prevention, and oil spill industry monitoring efforts that combat complacency—as intended by the Act. The information provided with the 2014 application package, follow up consultation with CIRCAC and public support through positive comments displayed ample representation of the communities and interests of Cook Inlet and promotion of environmentally safe marine transportation and oil facility operations.

Recertification

By letter dated August 27, 2014, the Commander, Seventeenth Coast Guard certified that the CIRCAC qualifies as an alternative voluntary advisory group under 33 U.S.C. 2732(o). This recertification terminates on August 31, 2015.

Dated: August 27, 2014.

Daniel B. Abel,

Rear Admiral, U.S. Coast Guard Commander, Seventeenth Coast Guard District.

[FR Doc. 2014–23658 Filed 10–2–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5750–N–40]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where

property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6672 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture:* Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202)- 720–8873; *COE:* Ms. Brenda John-Turner, Army Corps of Engineers, Real Estate, HQUSACE/CEMP–CR, 441 G Street NW., Washington, DC 20314; (202) 761–5222; *Energy:* Mr. David Steinau, Department of Energy, Office of Property Management, 1000 Independence Ave. SW., Washington, DC 20585 (202) 287–1503; *GSA:* Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 3960 N. 56th Ave. #104, Hollywood, FL. 33021; (443) 223–4639; Navy: Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202)685–9426 (These are not toll-free numbers).

Dated: September 25, 2014.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM Federal Register REPORT FOR 10/03/2014

Arkansas

Tract 12–113- Heibert Bernard House
102 Groinger Dr.
Hot Springs AR 71901
Landholding Agency: Interior
Property Number: 61201410004
Status: Excess
Directions: CORRECTION: This property was published in the Sept. 5 FR as suitable and available; however, HUD was notified that this property met the initial 60 day holding period and is now in the process of being demolished.
Comments: CORRECTION: This property is no longer available.

Suitable/Available Properties

Building

Colorado

Tucker Ponds Picnic Area Toilet, TKPDPATI
TKPDPATI/Rio Grande Nat'l Park
2.3 miles S on NFSR 390 from Intersection w/Hwy 160
South Fork CO 81154
Landholding Agency: Agriculture
Property Number: 15201430023
Status: Unutilized
Comments: Off-site removal; removal may cause bldg. to collapse; 52+ yrs. old; wood structure; human waste; habilitation longer than 14 days prohibited; contact Agriculture for more info.

Rio Grande National Forest Rd
Canyon Picnic Area/Boat Ramp Toilet 5001
5.2 Miles West on NFSR 520 from Intersection w/Hwy 160
Creede CO 81130
Landholding Agency: Agriculture
Property Number: 15201430024
Status: Unutilized
Comments: Off-site removal; removal may cause bldg. to collapse; 57+yrs. old; wood structure; holds human waste; contact Agriculture for more info.

Cross Creek CG Storage -
CRSCKCGTI/RIO Grande Nat'l Forest
6.2 Miles SW on NFSR 20 from Intersection W/Hwy 160
South Fork CO 81154
Landholding Agency: Agriculture
Property Number: 15201430025
Status: Unutilized
Comments: Off-site removal; removal may cause bldg. to collapse; 54+yrs. old; wood structure; holds human waste; habitation longer than 14 days prohibited; contact Agriculture for more Info.

Lower Beaver CG Toilet 3
LBEAVCGT3/Rio Grande Nat'l Forest
3 Miles SW on NFSR 20 from Intersection w/ Hwy 160
South Fork CO 81154
Landholding Agency: Agriculture
Property Number: 15201430026
Status: Unutilized
Comments: Off-site removal; 53+yrs. old; wood structure; human waste; habitation beyond 14 days prohibited; contact Agriculture for more info.

Bristol View GS Pit Toilet #
1103 Rio Grande Nat'l Forest
3.5 Miles Won NFSR 520 from intersection w/Hwy 149
Creede CO 81130
Landholding Agency: Agriculture
Property Number: 15201430027
Status: Unutilized
Comments: Off-site removal; 79+ years old; wood structure; site has restricted access; contact Agriculture for more information.

Lower Beaver CG Toilet 2
#LBEAVCGT2 Rio Grande Nat'l Forest
3 Miles SW on NFSR 20 from intersection w/ Hwy 160
South Fork CO 81154
Landholding Agency: Agriculture
Property Number: 15201430028
Status: Unutilized
Comments: Off-site removal; 53+ years old; wood structure; human waste; habitation beyond 14 days prohibited; contact Agriculture for more information.

Lobo Overlook Toilet
#LBOVLKT1/Rio Grande Nat'l Forest
Lobo Overlook 3 Miles Northerly of NFSR 402 from intersection w/Hwy 160
South Fork CO 81154
Landholding Agency: Agriculture
Property Number: 15201430029
Status: Unutilized
Comments: Off-site removal; 50+ years old; wood structure; human waste; habitation beyond 14 days prohibited; contact Agriculture for more information.

Michigan

Sleeping Bear Dunes National Lakeshore-Carmichael House
6234 S. Dune Highway
Empire MI 49630
Landholding Agency: GSA
Property Number: 54201430013
Status: Excess
GSA Number: 1–I–MI–0702–AB

Comments: Off-site removal only; 2,253 sq.; 100+yrs.-old; average condition; wood structure type; lead-based paint; contact GSA for more information.

Pennsylvania

Tract 01–116, Ranger Residence
3440 National Pike (US Route 40)
Farmington PA 15437
Landholding Agency: Interior
Property Number: 61201430002
Status: Excess
Comments: Off-site removal; 1,740 sq.; 62+yrs.old; extensive deterioration; animal infestation; structural warping; lead-based paint; asbestos; accessible during bus. hrs.; contact Interior for more info.

Texas

Building Camper Service
Restroom
1901 Skyview Dr.
Wylie TX 75098
Landholding Agency: COE
Property Number: 31201430011
Status: Excess
Comments: Off-site removal; 38+years old; 576 sq.; located in a controlled area; removal may be difficult; contact COE for more information.

Land

California

San Lorenzo Lot
Between 15770 and 15794 Connolly Avenue
San Lorenzo CA 94580
Landholding Agency: GSA
Property Number: 54201430014
Status: Excess
GSA Number: 9–W–CA–1703–AA
Directions: Land holding agency; FAA; Disposal; GSA.
Comments: Approximately 0.116 acres; contact GSA for more information.

Unsuitable Properties

Building

California

Building 326
LLNL Site 200, On the SW quadrant off of Second St.
Livermore CA 94550
Landholding Agency: Energy
Property Number: 41201430009
Status: Excess
Comments: Public access denied & no alternative w/out compromising Nat'l Sec.
Reasons: Secured Area

Building 444
LLNL Site 200, On the SE quadrant off of South Inner Loop
Livermore CA 94550
Landholding Agency: Energy
Property Number: 41201430010
Status: Excess
Comments: Public access denied & no alternative w/out compromising Nat'l Sec.
Reasons: Secured Area

Building 292
LLN Site 200, On the NW quadrant off of Avenue B
Livermore CA 94550
Landholding Agency: Energy
Property Number: 41201430011
Status: Excess
Comments: Public access denied & no alternative w/out compromising Nat'l Sec.
Reasons: Secured Area

Building 856
LLNL Site 300, 4 mils SW of Interstate 580 on Corral Hollow Rd.
Tracy CA 95376
Landholding Agency: Energy
Property Number: 41201430012
Status: Excess
Comments: Public access denied & no alternative w/out compromising Nat'l Sec.
Reasons: Secured Area

Building 443
LLNL Site 200, On the SE quadrant off of South Inner Loop
Livermore CA 94550
Landholding Agency: Energy
Property Number: 41201430013
Status: Excess
Comments: Public access denied & no alternative w/out compromising Nat'l Sec.
Reasons: Secured Area

Building 60014; San Clemente Island
Naval Base Coronado; P.O. Box 357040
San Diego CA 92135–7040
Landholding Agency: Navy
Property Number: 77201430016
Status: Unutilized
Comments: Property located within an Airport runway clear zone.
Reasons: Within airport runway clear zone

Pennsylvania

Former Antenna Test Site
Philadelphia Navy Yard Annex
Philadelphia PA
Landholding Agency: Navy
Property Number: 77201430015
Status: Unutilized
Directions: Includes bldg. 1091 & approx. 0.595 acres parcel
Comments: Public access denied and no alters. W/out compromising nat'l sec.
Reasons: Secured Area

[FR Doc. 2014–23275 Filed 10–2–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5807–N–03]

Final Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2015

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Final Fiscal Year (FY) 2015 Fair Market Rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 (USHA) requires the Secretary to publish FMRs periodically, but not less than annually, adjusted to be effective on October 1 of each year. This notice publishes the final FY 2015 FMRs for programs operating under Section 8 of the United States Housing Act of 1937 (The Act) or directed to use FMRs as calculated under Section 8 of the act. Currently the programs operating under Section 8 of the act are the Housing Choice Voucher, the Moderate Rehabilitation, and the project-based voucher programs. Additionally, based on Section 210 of Division L, Title II of the Consolidated Appropriations Act, 2014, Public Housing Authorities administering Public Housing must use these FMRs in calculating Flat Rents for public housing. Today's notice provides final FY 2015 FMRs for all areas that reflect the estimated 40th and 50th percentile rent levels trended to April 1, 2015. The FY 2015 FMRs are based on 5-year, 2008–2012 standard quality rents collected by the American Community Survey (ACS). These 5-year rents are updated by one-year recent-mover 2012 ACS rents. HUD uses the Consumer Price Index (CPI) rent and utility indexes to further update the data from 2012 to the end of 2013. HUD continues to use ACS data in different ways according to the statistical reliability of rent estimates for areas of different population sizes and counts of rental units.

The final FY 2015 FMRs in this notice have no methodology changes. HUD continues to use the Puerto Rico Community Survey (PRCS) data (the PRCS is a part of the ACS program) and the Consumer Price Index data calculated specifically for Puerto Rico, as it first did for the FY 2014 FMRs. HUD also continues to adjust the FMRs for Puerto Rico based on validated information related to utility rates, which have not shown up in the gross rent or CPI data. The trend factor, applied to all FMR areas, is the average annual change in national gross rents between 2007 and 2012.

The final FY 2015 FMR areas use the Office of Management and Budget (OMB) metropolitan area definitions as updated through December 1, 2009 and include HUD modifications that were first used in the determination of FY 2006 FMR areas. The February 28, 2013 update to the OMB metropolitan area definitions are not been incorporated in the FY 2015 FMRs process due to the timing of the release and the availability of ACS data. HUD will work toward incorporating these new area definitions into the Proposed FY 2016 FMRs. The Department hopes to provide more implementation details in an anticipated publication in January 2015.

The January 2015 notice will also discuss and solicit comments on several topics related to the calculation of FMRs, including the implementation of the February 28, 2013 OMB Metropolitan Area Definitions and

possible measures the Department is considering that would reduce the concentration of Section 8 voucher tenants. For example, HUD is evaluating alternatives to the current 50th percentile FMR program whose purpose was to mitigate excessive geographic concentration of voucher tenants. HUD will solicit comments to determine interest in a program that is based on different measures for determining how many and which areas would receive special FMRs to encourage deconcentration, as well as on alternative FMR-based tools for promoting deconcentration such as Small Area FMRs estimated at the ZIP code level.

The final FY 2015 notice updates the FMRs for Bennington, Windham, and Windsor counties in Vermont to incorporate the results of surveys received after publication of the proposed FY 2015 FMRs. These surveys result in increases for all three nonmetropolitan counties.

DATES: *Effective Date:* The FMRs published in this notice are effective on October 1, 2014.

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800–245–2691 or access the information on the HUD USER Web site *http://www.huduser.org/portal/datasets/fmr.html*. FMRs are shown at the 40th or 50th percentile in Schedule B. For informational purposes, 40th percentile recent-mover rents for the areas with 50th percentile FMRs will be provided in the HUD FY 2015 FMR documentation system at *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr15* and 50th percentile rents for all FMR areas will be published at *http://www.huduser.org/portal/datasets/50per.html* after publication of final FY 2015 FMRs.

Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. For flat rent questions, please contact Todd Thomas, Acting Director of the Public Housing Management and Occupancy Division of the Public Housing Office at 202–708–5849. Questions on how to conduct FMR surveys or concerning further methodological explanations may be addressed to Marie L. Lihn or Peter B. Kahn, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone 202–402–2409. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339. (Other than the HUD USER information line and TDD numbers, telephone numbers are not toll-free.)

Electronic Data Availability: This **Federal Register** notice is available electronically from the HUD User page at *http://www.huduser.org/datasets/fmr.html*. **Federal Register** notices also are available electronically from *http://www.gpoaccess.gov/fr/index.html*, the U.S. Government Printing Office Web site. Complete documentation of the methodology and data used to compute each area's final FY 2015 FMRs is available at *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr15*. Final FY 2015 FMRs are available in a variety of electronic formats at *http://www.huduser.org/portal/datasets/fmr.html*. FMRs may be accessed in PDF format as well as in Microsoft Excel. A new HUD User page has been developed for Small Area FMRs and those based on final FY 2015 Metropolitan Area Rents and historical versions of this data will be on this site, with a link from the FMR page of HUD User *http://www.huduser.org/portal/datasets/fmr.html*. Please note that these Small Area FMRs are for reference only, except where they are used by public housing authorities (PHAs) participating in the Small Area FMR demonstration. With approval from the Housing Voucher Management Division of the Office of Public and Indian Housing (PIH) these Small Area FMRs may be used in the process of determining exception payment standards.

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the USHA (42 U.S.C. 1437f) authorizes housing assistance to aid lower-income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different geographic areas. In the HCV program, the FMR is the basis for determining the ''payment standard amount'' used to calculate the maximum monthly subsidy for an assisted family (see 24 CFR 982.503). In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. In addition, all rents subsidized under the HCV program must meet reasonable rent standards. HUD's regulations at 24 CFR 888.113 require it to establish 50th percentile FMRs for certain areas.

II. Procedures for the Development of FMRs

Section 8(c)(1) of the USHA requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. Section 8(c)(1) states, in part, as follows:

> Proposed fair market rentals for an area shall be published in the **Federal Register** with reasonable time for public comment and shall become effective upon the date of publication in final form in the **Federal Register**. Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in the market area suitable for occupancy by persons assisted under this section.

HUD's regulations at 24 CFR part 888 provide that HUD will develop proposed FMRs, publish them for public comment, provide a public comment period of at least 30 days, analyze the comments, and publish final FMRs. (See 24 CFR 888.115.) For FY 2015 FMRs, HUD has considered all comments submitted in response to its August 15, 2014 (78 FR 47339) proposed FY 2015 FMRs but its responses are posted on its Web site because of the time required to publish this notice.

In addition, HUD's regulations at 24 CFR 888.113 set out procedures for HUD to assess whether areas are eligible for FMRs at the 50th percentile. Minimally qualified areas [1] are reviewed each year unless not eligible to be reviewed. Areas that currently have 50th percentile FMRs are evaluated for progress in voucher tenant concentration after three years in the program. Continued eligibility is determined using HUD administrative data that show levels of voucher tenant concentration. The levels of voucher tenant concentration must be above 25 percent and show a decrease in concentration since the last evaluation. At least 85 percent of the voucher units in the area must be reported for a determination on the

[1] As defined in 24 CFR 888.113(c), a minimally qualified area is an area with at least 100 Census tracts where 70 percent or fewer of the Census tracts with at least 10 two-bedroom rental units are Census tracts in which at least 30 percent of the two bedroom rental units have gross rents at or below the two bedroom FMR set at the 40th percentile rent. This continues to be evaluated with 2000 Decennial Census information. Although the 5-year ACS tract level data is available, HUD plans to implement new 50th percentile areas in conjunction with the implementation of new OMB area definitions.

status of a 50th percentile area. Areas are not qualified for review if they are within the three-year period as a 50th-percentile area or have lost 50th-percentile status for failure to de-concentrate within the last three years.

In FY 2014 there were 19 areas using 50th-percentile FMRs. Of these 19 areas, 13 areas were eligible for evaluation. Only four of the 13 areas will continue as 50th percentile FMR areas; those nine areas that do not continue as 50th percentile areas did not show measurable deconcentration and will not be evaluated for an additional three-year period, as required by the regulation. An additional six areas that failed to deconcentrate as of FY 2012 will once again become 50th percentile FMR areas.

In summary, there will be 16 50th-percentile FMR areas in FY 2015. In Schedule B, where all FMRs are listed by state and area, an asterisk designates the 50th percentile FMR areas. The following table lists the FMR areas along with the year of their next evaluation.

FY 2015 50TH-PERCENTILE FMR AREAS AND YEAR OF NEXT REEVALUATION

Albuquerque, NM MSA	2018	Baltimore-Towson, MD HUD Metro FMR Area	2016
Chicago-Joliet-Naperville, IL HUD Metro FMR Area	2018	Denver-Aurora-Broomfield, CO MSA	2018
Fort Lauderdale, FL HUD Metro FMR Area	2016	Hartford-West Hartford-East Hartford, CT HUD Metro FMR Area.	2018
Honolulu, HI MSA	2018	Kansas City, MO–KS HUD Metro FMR Area	2018
Milwaukee-Waukesha-West Allis, WI MSA	2018	New Haven-Meriden, CT HUD Metro FMR Area	2016
Philadelphia-Camden-Wilmington, PA–NJ–DE–MD MSA	2016	Richmond, VA HUD Metro FMR Area	2016
Riverside-San Bernardino-Ontario, CA MSA	2018	Tacoma, WA HUD Metro FMR Area	2018
Virginia Beach-Norfolk-Newport News, VA–NC MSA	2018	West Palm Beach-Boca Raton, FL HUD Metro FMR Area.	2016

III. Proposed FY 2015 FMRs

On August 15, 2014 (79 FR 48178), HUD published proposed FY 2015 FMRs with a comment period that ended September 15, 2014. HUD has considered all public comments received and HUD provides responses to these comments on the FMR Web site *http://www.huduser.org/portal/datasets/fmr.html*. HUD does not specifically identify each commenter, but all comments are available for review on the Federal Government's Web site for capturing comments on proposed regulations and related documents (Regulations.gov—*http://www.regulations.gov/#!docketDetail;D=HUD-2014-0065*).

IV. FMR Methodology

This section provides a brief overview of the calculation steps for the FY 2015 FMRs. For complete information on how FMR areas are determined by each specific FMR area, see the online documentation *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr15*.

The FY 2015 FMRs use OMB metropolitan area definitions and standards that were first used in the FY 2006 FMRs. OMB changes to the metropolitan area definitions through December 2009 are incorporated. HUD has not incorporated the February 28, 2013 OMB metropolitan area definition changes because the Census Bureau did not incorporate these definitions into the 2012 ACS tabulations; therefore, the FY 2015 area definitions are the same as those used in FY 2014. HUD anticipates that the new OMB area definitions (based on the 2010 decennial Census) will replace those based on the 2000 Census (first incorporated into the FMRs with the FY 2006 publication that replaced those based on the 1990 Census) with the FY 2016 proposed FMRs.

A. Base Year Rents

HUD used special tabulations of 5-year ACS data collected between 2008 through 2012. For FY 2015 FMRs, HUD updated the base rents set in FY 2014 using the 2007–2011 5-year data with the 2008–2012 5-year ACS data.[2]

HUD historically based FMRs on gross rents for recent movers (those who have moved into their current residence in the last 24 months). However, due to the nature of the 5-year ACS data, HUD developed a new methodology for calculating recent-mover FMRs in FY 2012. As in FY 2012, HUD assigns all areas a base rent which is the estimated two-bedroom standard quality 5-year gross rent from the ACS.[3] Because HUD's regulations mandate that FMRs represent recent mover gross rents, HUD continues to apply a recent mover factor to the standard quality base rents assigned from the 5-year ACS data. Calculation of the recent mover factor is described below.

[2] The only difference in survey data between the 2007–2011 5-year ACS data and the 2008–2012 5-year ACS data is the replacement of 2007 survey responses with survey responses collected in 2012. The 2008, 2009 2010 and 2011 survey responses remain intact; however, the weighting placed on each survey response is updated by the Census Bureau during the process of aggregating the data to be as of the final year of the 5-year period.

[3] For areas with a two-bedroom standard quality gross rent from the ACS that have a margin of error greater than the estimate or no estimate due to inadequate sample in the 2012 5-year ACS, HUD uses the two-bedroom state non-metro rent for non-metro areas.

B. Recent Mover Factor

Following the assignment of the standard quality two-bedroom rent described above, HUD applies a recent mover factor to these rents. The calculation of the recent mover factor for FY 2015 is similar to the methodology used in FY 2014, with the only difference being the use of updated ACS data. The following describes the process for determining the appropriate recent mover factor.

In general, HUD uses the 1 year ACS-based two-bedroom recent mover gross rent estimate from the smallest geographic area encompassing the FMR area for which the estimate is statistically reliable to calculate the recent mover factor.[4] HUD calculates some areas' recent mover factors using data collected just for the FMR area. However, HUD bases other areas' recent mover factor on larger geographic areas if this is necessary to obtain statistically reliable estimates. For metropolitan areas that are sub-areas of larger metropolitan areas, the order is FMR area, metropolitan area, aggregated metropolitan parts of the state, and state. Metropolitan areas that are not divided into subparts follow a similar path from FMR area, to aggregated metropolitan parts of the state, to state. In nonmetropolitan areas the recent mover factor is based on the FMR area, aggregated nonmetropolitan parts of the state, or if that is not available, on the basis of the whole state. HUD calculates the recent mover factor as the percentage change between the 5-year

[4] For the purpose of the recent mover factor calculation, a statistically reliable estimate occurs where the recent mover gross rent has a margin of error that is less than the estimate itself.

2008–2012 standard quality two-bedroom gross rent and the 1-year 2012 recent mover two-bedroom gross rent for the recent mover factor area. HUD does not allow recent mover factors to lower the standard quality base rent; therefore, if the 5-year standard quality rent is larger than the comparable 1-year recent mover rent, the recent mover factor is set to 1. The process for calculating each area's recent mover factor is detailed in the FY 2015 Final FMR documentation system available at: *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr15*. Applying the recent mover factor to the standard quality base rent produces an ''as of'' 2012 recent mover two-bedroom base gross rent for the FMR area.[5]

C. Other Rent Survey Data

HUD does not use the ACS as the base rent or recent mover factor for 16 areas where the FY 2015 FMR was adjusted based on survey data collected in late 2012, 2013, or 2014. PHAs conducted surveys for the following areas: Bennington County, VT, Hood River County, OR, Oakland, CA, Santa Barbara, CA, Stamford, CT, Windham County, VT, and Windsor County, VT, while HUD conducted surveys for Burlington, VT, Cheyenne, WY, Danbury, CT, Flagstaff, AZ, Mountrail County, ND, Odessa, TX, Rochester, MN, Ward County, ND, and Williams County, ND. HUD has no funds to conduct surveys of FMR areas, and so all future surveys must be paid for by the PHAs.

D. Updates From 2012 to 2013

HUD updates the ACS-based ''as of'' 2012 rent through the end of 2013 using the annual change in CPI from 2012 to 2013. As in previous years, HUD uses Local CPI data coupled with Consumer Expenditure Survey (CEX) data for FMR areas with at least 75 percent of their population within Class A metropolitan areas covered by local CPI data. HUD uses Census region CPI data for FMR areas in Class B and C size metropolitan areas and nonmetropolitan areas without local CPI update factors. Additionally, HUD is using CPI data collected locally in Puerto Rico as the basis for CPI adjustments from 2012 to 2013 for all Puerto Rico FMR areas. Following the application of the appropriate CPI update factor, HUD converts the ''as of'' 2013 CPI adjusted rents to ''as of'' December 2013 rents by multiplying each rent by the national December 2013 CPI divided by the national annual 2013 CPI value.

E. Trend From 2013 to 2015

As in FY 2014, HUD continues to calculate the trend factor as the annualized change in median gross rents as measured across the most recent 5 years of available 1-year ACS data. The national median gross rent in 2007 was $789 and $884 in 2012. The overall change between 2007 and 2012 is 12.04 percent and the annualized change is 2.30 percent. Over a 15-month time period, the effective trend factor is 2.883 percent. HUD applies this trend factor to the ''as of'' December 2013 rents to produce FMRs that correspond to the middle of the 2015 fiscal year.

F. Puerto Rico Utility Adjustments

The gross rent data from the 2008 to 2012 Puerto Rico Community Survey (PRCS) does not include the utility rate increases from Commonwealth-owned utility companies from last year that were submitted as part of the comments from Puerto Rico housing agencies. HUD included additional utility values in the final FY 2014 FMRs to account for these changes in Puerto Rico and these utility adjustments are continued for all areas of Puerto Rico in the FY 2015 FMRs.

The table below shows the fixed amounts that are added to the Puerto Rico FMRs by bedroom count.

	0—Bedroom	1—Bedroom	2—Bedroom	3—Bedroom	4—Bedroom
Utility Adjustment	$20	$25	$35	$40	$50

G. Bedroom Rent Adjustments

HUD calculates the primary FMR estimates for two-bedroom units. This is generally the most common sized rental unit and, therefore, the most reliable to survey and analyze. Formerly, after each decennial Census, HUD calculated rent relationships between two-bedroom units and other unit sizes and used them to set FMRs for other units. HUD did this because it is much easier to update two-bedroom estimates annually and to use pre-established cost relationships with other unit bedroom counts than it is to develop independent FMR estimates for each unit bedroom count. When calculating FY 2013 FMRs, HUD updated the bedroom ratio adjustment factors using 2006–2010 5-year ACS data using similar methodology to what was implemented when calculating bedroom ratios using 2000 Census data to establish rent ratios. The bedroom ratios used in the calculation of FY 2015 FMRs remain the 2006–2010 based ratios applied to the two-bedroom FMR computed from the 2012 ACS data.

HUD established bedroom interval ranges based on an analysis of the range of such intervals for all areas with large enough samples to permit accurate bedroom ratio determinations. These ranges are: Efficiency (zero-bedroom) FMRs are constrained to fall between 0.59 and 0.81 of the two-bedroom FMR; one-bedroom FMRs must be between 0.74 and 0.84 of the two-bedroom FMR; three-bedroom FMRs must be between 1.15 and 1.36 of the two-bedroom FMR; and four-bedroom FMRs must be between 1.24 and 1.64 of the two-bedroom FMR. (The maximums for the three-bedroom and four-bedroom FMRs are irrespective of the adjustments discussed in the next paragraph.) HUD adjusts bedroom rents for a given FMR area if the differentials between unit bedroom-count FMRs were inconsistent with normally observed patterns (i.e., efficiency rents are not allowed to be higher than one-bedroom rents and four-bedroom rents are not allowed to be lower than three-bedroom rents). The bedroom ratios for Puerto Rico follow these constraints.

HUD further adjusts the rents for three-bedroom and larger units to reflect HUD's policy to set higher rents for these units than would result from using unadjusted market rents. This adjustment is intended to increase the likelihood that the largest families, who have the most difficulty in leasing units, will be successful in finding eligible program units. The adjustment adds 8.7 percent to the unadjusted three-bedroom FMR estimates and adds 7.7 percent to the unadjusted four-bedroom

[5] The Bureau of the Census does not collect the ACS data in the Pacific Islands (Guam, Northern Marianas and American Samoa) or the US Virgin Islands. As part of the 2010 Decennial Census, the Census Bureau conducted a ''long-form'' sample surveys for these areas. These data were not released in time to be included in FY 2015 FMRs. Therefore, HUD uses the national change in gross rents, measured between 2011 and 2012 to update last year's FMRs for these areas.

FMR estimates. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room occupancy units are 0.75 times the efficiency FMR.

For low-population, nonmetropolitan counties with small or statistically insignificant 2006–2010 5-year ACS recent-mover rents, HUD uses state nonmetropolitan data to determine bedroom ratios for each unit bedroom count. HUD made this adjustment to protect against unrealistically high or low FMRs due to insufficient sample sizes.

V. Manufactured Home Space Surveys

The FMR used to establish payment standard amounts for the rental of manufactured home spaces (pad rentals including utilities) in the HCV program is 40 percent of the FMR for a two-bedroom unit. HUD will consider modification of the manufactured home space FMRs where public comments present statistically valid survey data showing the 40th-percentile manufactured home space rent (including the cost of utilities) for the entire FMR area.

All approved exceptions to these rents based on survey data that were in effect in FY 2014 were updated to FY 2015 using the same data used to estimate the HCV program FMRs. If the result of this computation was higher than 40 percent of the new two-bedroom rent, the exception remains and is listed in Schedule D. The FMR area definitions used for the rental of manufactured home spaces are the same as the area definitions used for the other FMRs. No additional exception requests were received in the comments to the FY 2015 Proposed FMRs.

VI. Small Area Fair Market Rents

Small Area Fair Market Rents (SAFMRs) are used as part of a court settlement by all public housing authorities (PHAs) in the Dallas, TX HMFA. They are also used as part of HUD's demonstration program for five PHAs the Housing Authority of the County of Cook (IL), the City of Long Beach (CA) Housing Authority, the Chattanooga (TN) Housing Authority, the Town of Mamaroneck (NY) Housing Authority, and the Laredo (TX) Housing Authority. These FMRs are listed in the Schedule B addendum.

SAFMRs are calculated using a rent ratio determined by dividing the median gross rent across all bedrooms for the small area (a ZIP code) by the similar median gross rent for the metropolitan area of the ZIP code. This rent ratio is multiplied by the current two-bedroom rent for the entire metropolitan area containing the small area to generate the current year two-bedroom rent for the small area. In small areas where the median gross rent is not statistically reliable, HUD substitutes the median gross rent for the county containing the ZIP code in the numerator of the rent ratio calculation. For FY 2015 SAFMRs, HUD continues to use the rent ratios developed in conjunction with the calculation of FY 2013 FMRs based on 2006–2010 5-year ACS data.[6]

VII. Public Comments Overview of Comments

A. Overview

A total of 64 comments were received and posted on the regulations.gov site (*http://www.regulations.gov/#!docketDetail;D=HUD-2014-0065*), which is also linked on the HUD User FMR page *http://www.huduser.org/portal/datasets/fmr.html.* Most comments contested FMR reductions compared with the FY 2014 FMRs and some contested reductions in FMRs over several years. None of these commenters provided a statistically valid survey of rents that could be used to adjust the FY 2015 FMR. While the timing between proposed and final was short, only one commenter announced its intention to conduct a rent survey, but did not file a formal comment. Several commenters who did not experience a reduction in FY 2015 FMRs complained about the small increase in light of rental market conditions for their area. And some nonmetropolitan areas were concerned with the large increases and decreases that the ACS data provides.

A significant proportion of the comments opposed the use of FMRs in the calculation of public housing flat rents. While FMRs are used in other HUD programs, the methodology used in determining FMRs and the publication of FMRs for comment is primarily in support of the Section 8 Housing Choice Voucher program. Other HUD programs must rely on the current FMR methodology. The adjustment of flat rents by FMRs is an issue for the program staff in the Division of Housing Management and Occupancy of PIH.

Decreases of any level in the FMR were opposed especially for certain HUD programs and other programs that use FMRs but do not allow flexibility in applying FMRs, such as the Continuum of Care program and the Low-Income Housing Tax Credit program (LIHTC). Several comments requested that HUD hold the FY 2015 FMRs harmless, that is they wanted the FMR to remain at the FY 2014 level, or some earlier level if it would otherwise be lower. In addition to, or instead of, implementing a hold harmless policy, several comments asked HUD to limit annual increases and decreases of FMRs to five percent, or at the very least impose a hard floor of five percent on decreases. This inability to hold FMRs harmless at some previously higher level is especially difficult for LIHTC landlords and developers to understand because no such legal prohibition exists for the calculation of HUD's income limits which are also used in the rent calculation for these units. HUD has been able to use such measures in constraining income limit increases and decreases, but HUD is specifically precluded from incorporating these changes into the FMR methodology by the statutory language governing FMRs requiring the use of the most recent available data. As stated in previous FMR notices, HUD's Housing Choice Voucher program counsel reviewed the statutory language governing the calculation of FMRs to determine if the Department has the authority to institute caps and floors on the amount the FMRs could change annually. Based on this review, HUD's program counsel issued a legal opinion that HUD CANNOT impose floors or caps in changes in FMRs because this would violate the portion of the statute that directs HUD to use the most current data available. The legal opinion is that the statute needs to be changed in order for HUD to implement these types of caps and floors. No statutory changes regarding the use of the most recent available data have since been enacted; consequently, HUD does not have the authority to use a hold harmless policy or other policy which would permit HUD to impose caps and floors on FMR changes. HUD is required to use the most recent available data and FMRs must increase or decrease based on this data. Ignoring decreases or phasing decreases or increases in over several years would not fully implement FMRs based on the most recent available data.

Comments were received that oppose the current methodology used to define FMR areas. HUD has not incorporated

[6] HUD has provided numerous detailed accounts of the calculation methodology used for Small Area Fair Market Rents. Please see our **Federal Register** notice of April 20, 2011 (76 FR 22125) for more information regarding the calculation methodology. HUD's Final FY 2015 FMR documentation system available at (*http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr15*) contains detailed calculations for each ZIP code area in participating jurisdictions.

the new metropolitan area definitions released by OMB on February 28, 2013 for the FY 2015 FMRs, but will begin to review how to incorporate these new area definitions.

Several PHAs with lower proposed FY 2015 FMRs relative to FY 2014 or earlier FMRs requested that HUD conduct a survey of rents for their FMR areas. As stated in the proposed FY 2015 FMR Notice, HUD anticipates it will have no funds to conduct surveys in FY 2015. While one area provided data, this data could not be accepted as the basis for changing FMRs because it did not meet the threshold for representativeness and/or statistical reliability established for rental survey data to be used in FMR determinations. HUD may not use data from newspaper ads because these do not represent actual contracted rents, or rent reasonableness studies as these typically do not sample units randomly. Other data provided may be acceptable, but the sources and method of collection must be identified. Data must be collected randomly and cover the entire rental stock including single-family units, not just large apartment projects. Single family units and smaller apartment buildings are an important part of the rental market and cannot be ignored. HUD did receive notification that one PHA in a nonmetropolitan area is conducting its own survey and has sought guidance from HUD on the survey methodology. Any other PHAs interested in surveys to support changes in FMRs should review section VIII of this notice for further information regarding acceptable survey methodology.

For areas that are considering conducting their own surveys, HUD would caution them to explore all no-cost options as a means of alleviating problems they are having with low FMRs. HUD has experience conducting surveys in areas with low or no vacancy rates and this experience has shown that it is extremely difficult to capture accurate gross rent levels in tight markets. For that reason, HUD provides emergency exception payment standards up to 135 percent of the FMR for the Section 8 voucher program in areas impacted by natural resource exploration or in presidentially declared disaster areas. PHAs interested in applying for these emergency payment standards should contact their local HUD field office. Other programs that use FMRs will have to pursue similar strategies such as exception payment standards or hold harmless provisions within the statutory and regulatory framework governing those programs.

B. Issues Raised in Comments and HUD Responses

In accordance with 24 CFR 888.115, HUD has reviewed the public comments that have been submitted by the due date and has determined that there are no comments with ''statistically valid rental survey data that justify the requested changes.'' HUD's responses to all known comments received by the comment due date and a part of the notice record http://www.regulations.gov/#!docketDetail;D=HUD-2014-0065 are located at *http://www.huduser.org/portal/datasets/fmr.html*.

VIII. Rental Housing Surveys

In 2011, HUD solicited bidders to study the methodology used to conduct local area surveys of gross rents to determine if the Random Digit Dialing (RDD) methodology could be improved upon. The Department undertook this study due to the increasing costs and declining response rates associated with telephone surveys. Furthermore, the advent of the 1-year ACS limits the need for surveys in large metropolitan areas. Based on this research, the Department decided that its survey methodology should be changed with mail surveys being the preferred method for conducting surveys, because of the lower cost and greater likelihood of survey responses. These surveys, however, take almost twice as long to conduct as prior survey methods took, and when response times are most critical, the Department may choose to conduct random digit dialing surveys as well, as the budget permits. Unfortunately, the anticipated budget does not permit HUD to conduct any surveys in FY 2015. The methodology for both types of surveys along with the survey instruments is posted on the HUD USER Web site, at the bottom of the FMR page in a section labeled Fair Market Rent Surveys at: *http://www.huduser.org/portal/datasets/fmr.html*

Other survey methodologies are acceptable in providing data to support comments if the survey methodology can provide statistically reliable, unbiased estimates of the gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn to be statistically representative of the entire rental housing stock of the FMR area. Surveys must include units at all rent levels and be representative of structure type (including single-family, duplex, and other small rental properties), age of housing unit, and geographic location. The 2008–2012 5-year ACS data should be used as a means of verifying if a sample is representative of the FMR area's rental housing stock.

Most surveys cover only one- and two-bedroom units, which has statistical advantages because these are generally the most abundant rental units in an area. However in nonmetropolitan areas and some metrolitan areas, three-bedroom units are also surveyed because there are significant rental units at this size in the FMR area. If the survey is statistically acceptable, HUD will estimate FMRs for other bedroom sizes using ratios based on the 2006–2010 5-year ACS data. A PHA or contractor that cannot obtain the recommended number of sample responses after reasonable efforts should consult with HUD before abandoning its survey; in such situations, HUD may find it appropriate to relax normal sample size requirements.

HUD will consider increasing manufactured home space FMRs where public comment demonstrates that 40 percent of the two-bedroom FMR is not adequate. In order to be accepted as a basis for revising the manufactured home space FMRs, comments must include a pad rental survey of the mobile home parks in the area, identify the utilities included in each park's rental fee, and provide a copy of the applicable public housing authority's utility schedule.

As stated earlier in this Notice, HUD is required to use the most recent data available when calculating FMRs. Therefore, in order to re-evaluate an area's FMR, HUD requires more current rental market data than the 2012 ACS.

VIII. Environmental Impact

This Notice involves the establishment of fair market rent schedules, which do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are proposed to be amended as shown in the Appendix to this notice:

Dated: September 29, 2014.

Katherine M. O'Regan,

Assistant Secretary for Policy Development and Research.

Fair Market Rents for the Housing Choice Voucher Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. *Metropolitan Areas*—Most FMRs are market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental-housing units are in direct competition. HUD is using the metropolitan CBSAs, which are made up of one or more counties, as defined by the Office of Management and Budget (OMB), with some modifications. HUD is generally assigning separate FMRs to the component counties of CBSA Micropolitan Areas.

b. *Modifications to OMB Definitions*—Following OMB guidance, the estimation procedure for the FY 2015 Final FMRs incorporates the OMB definitions of metropolitan areas based on the CBSA standards as implemented with 2000 Census data updated through December 1, 2009, but makes adjustments to the definitions to separate subparts of these areas where FMRs or median incomes would otherwise change significantly if the new area definitions were used without modification. In CBSAs where subareas are established, it is HUD's view for programmatic purposes that the geographic extent of the housing markets are not yet the same as the geographic extent of the CBSAs, but may become so in the future as the social and economic integration of the CBSA component areas increases. Modifications to metropolitan CBSA definitions are made according to a formula as described below.

Metropolitan area CBSAs (referred to as MSAs) may be modified to allow for subarea FMRs within MSAs based on the boundaries of old FMR areas (OFAs) within the boundaries of new MSAs. (OFAs are the FMR areas defined for the FY 2005 FMRs. Collectively they include 1999-definition MSAs/Primary Metropolitan Statistical Areas (PMSAs), metro counties deleted from 1999-definition MSAs/PMSAs by HUD for FMR purposes, and counties and county parts outside of 1999-definition MSAs/PMSAs referred to as nonmetropolitan counties.) Subareas of MSAs are assigned their own FMRs when the subarea 2000 Census Base Rent differs by at least 5 percent from (i.e., is at most 95 percent or at least 105 percent of) the MSA 2000 Census Base Rent, or when the 2000 Census Median Family Income for the subarea differs by at least 5 percent from the MSA 2000 Census Median Family Income. MSA subareas, and the remaining portions of MSAs after subareas have been determined, are referred to as HUD Metro FMR Areas (HMFAs) to distinguish these areas from OMB's official definition of MSAs.

The specific counties and New England towns and cities within each state in MSAs and HMFAs are listed in Schedule B.

2. Bedroom Size Adjustments

Schedule B shows the FMRs for zero-bedroom through four-bedroom units. The Schedule B addendum shows Small Area FMRs for all PHAs operating using Small Area FMRs. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the zero-bedroom FMR.

3. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each state. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by state.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one state can be identified by consulting the listings for each applicable state.

c. Two nonmetropolitan counties are listed alphabetically on each line of the non-metropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan county are listed immediately following the county name.

BILLING CODE 4210–67–P

ALABAMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anniston-Oxford, AL MSA	491	513	675	872	908	Calhoun
Auburn-Opelika, AL MSA	597	601	813	1119	1374	Lee
Birmingham-Hoover, AL HMFA	545	652	773	1015	1142	Bibb, Blount, Jefferson, St. Clair, Shelby
Chilton County, AL HMFA	423	475	599	802	1061	Chilton
Columbus, GA-AL MSA	536	628	745	1026	1319	Russell
Decatur, AL MSA	457	552	655	908	936	Lawrence, Morgan
Dothan, AL HMFA	461	493	635	847	1047	Geneva, Houston
Florence-Muscle Shoals, AL MSA	474	477	609	813	816	Colbert, Lauderdale
Gadsden, AL MSA	370	478	622	775	874	Etowah
Henry County, AL HMFA	435	465	599	883	987	Henry
Huntsville, AL MSA	515	576	711	978	1033	Limestone, Madison
Mobile, AL MSA	624	652	773	1036	1191	Mobile
Montgomery, AL MSA	628	663	788	1084	1288	Autauga, Elmore, Lowndes, Montgomery
Tuscaloosa, AL MSA	450	572	757	950	1079	Greene, Hale, Tuscaloosa
Walker County, AL HMFA	491	502	608	840	1021	Walker

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baldwin	494	643	762	1123	1318	Barbour	492	495	670	834	895
Bullock	481	505	599	791	1061	Butler	453	456	599	870	894
Chambers	511	514	696	867	1034	Cherokee	481	500	599	883	894
Choctaw	520	523	708	882	1056	Clarke	461	464	599	836	891
Clay	445	448	599	803	806	Cleburne	510	514	695	866	929
Coffee	477	480	616	835	863	Conecuh	459	462	599	883	886
Coosa	481	505	599	746	801	Covington	460	463	599	866	961
Crenshaw	440	443	599	845	894	Cullman	490	500	611	770	817
Dale	400	470	600	874	1050	Dallas	382	443	599	766	977
DeKalb	418	543	703	879	1121	Escambia	484	505	599	746	870
Fayette	481	505	599	786	1061	Franklin	440	443	599	746	894
Jackson	481	505	599	746	820	Lamar	481	505	599	746	894
Macon	440	443	599	746	848	Marengo	475	478	599	796	801
Marion	481	491	599	869	872	Marshall	447	450	599	825	828
Monroe	481	505	599	883	1061	Perry	459	462	599	874	894
Pickens	440	443	599	746	801	Pike	489	510	605	888	891
Randolph	486	489	619	771	827	Sumter	487	512	607	756	852
Talladega	443	446	603	823	826	Tallapoosa	472	475	599	816	819
Washington	481	505	599	883	899	Wilcox	440	443	599	746	801
Winston	481	505	599	820	1061						

ALASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anchorage, AK HMFA	809	936	1199	1767	2124	Anchorage
Fairbanks, AK MSA	819	1018	1377	2029	2365	Fairbanks North Star
Matanuska-Susitna Borough, AK HMFA	658	761	1007	1484	1784	Matanuska-Susitna

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 2

ALASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aleutians East	599	703	834	1039	1204	Aleutians West	876	1088	1472	1833	2126
Bethel	832	953	1289	1605	1723	Bristol Bay	778	800	1083	1457	1462
Denali	967	1135	1346	1983	1990	Dillingham	758	891	1056	1315	1525
Haines	657	741	915	1348	1353	Hoonah-Angoon	548	564	763	950	1178
Juneau	769	933	1262	1652	1963	Kenai Peninsula	664	704	882	1105	1445
Ketchikan Gateway	653	843	1097	1616	1754	Kodiak Island	675	795	994	1465	1761
Lake and Peninsula	531	623	739	993	1309	Nome	807	1003	1357	1690	1813
North Slope	734	925	1097	1366	1759	Northwest Arctic	1019	1064	1261	1571	1685
Petersburg	694	715	967	1204	1713	Prince of Wales-Hyder	664	668	904	1126	1208
Sitka	807	856	1158	1613	1672	Skagway	857	1007	1194	1487	1724
Southeast Fairbanks	623	736	976	1216	1678	Valdez-Cordova	771	815	1019	1435	1550
Wade Hampton	624	733	869	1082	1255	Wrangell	596	648	830	1223	1227
Yakutat	625	679	870	1282	1541	Yukon-Koyukuk	593	609	734	914	1139

ARIZONA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Flagstaff, AZ MSA	710	825	1033	1311	1671	Coconino
Lake Havasu City-Kingman, AZ MSA	477	589	752	1019	1180	Mohave
Phoenix-Mesa-Glendale, AZ MSA	582	735	908	1338	1563	Maricopa, Pinal
Prescott, AZ MSA	555	630	796	1173	1240	Yavapai
Tucson, AZ MSA	489	611	822	1207	1436	Pima
Yuma, AZ MSA	605	647	854	1258	1441	Yuma

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Apache	389	475	643	805	967	Cochise	581	600	751	1085	1330
Gila	597	622	838	1210	1420	Graham	454	641	763	1124	1128
Greenlee	458	475	643	801	859	La Paz	536	556	752	937	1167
Navajo	534	537	727	1025	1036	Santa Cruz	544	615	763	962	1351

ARKANSAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR HMFA	490	559	719	1059	1249	Benton, Madison, Washington
Fort Smith, AR-OK HMFA	484	487	638	850	958	Crawford, Sebastian
Franklin County, AR HMFA	457	460	623	803	936	Franklin
Grant County, AR HMFA	421	493	584	861	1034	Grant
Hot Springs, AR MSA	473	588	795	1058	1298	Garland
Jonesboro, AR HMFA	381	506	626	879	883	Craighead
Little Rock-North Little Rock-Conway, AR HMFA	536	619	744	1040	1155	Faulkner, Lonoke, Perry, Pulaski, Saline
Memphis, TN-MS-AR HMFA	614	702	832	1137	1267	Crittenden
Pine Bluff, AR MSA	409	482	641	803	982	Cleveland, Jefferson, Lincoln
Poinsett County, AR HMFA	366	446	584	856	1008	Poinsett
Texarkana, TX-Texarkana, AR MSA	479	622	764	952	1021	Miller

ARKANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Arkansas	435	438	592	737	840
Baxter	449	456	608	891	1077
Bradley	411	432	584	848	851
Carroll	455	458	607	791	811
Clark	440	443	584	774	780
Cleburne	472	475	609	800	934
Conway	464	467	632	787	1025
Dallas	455	493	584	861	1021
Drew	429	432	584	840	1034
Greene	393	466	627	870	1111
Hot Spring	472	510	605	806	935
Independence	433	436	590	747	947
Jackson	429	432	584	861	1034
Lafayette	429	432	584	861	884
Lee	472	510	605	775	809
Logan	347	432	584	727	814
Mississippi	378	447	605	804	892
Montgomery	429	432	584	727	884
Newton	429	432	584	727	884
Phillips	429	432	584	861	953
Polk	448	451	584	782	785
Prairie	455	493	584	861	1034
St. Francis	472	493	584	813	935
Searcy	429	432	584	727	780
Sharp	429	432	584	768	876
Union	485	489	661	823	944
White	453	456	617	909	956
Yell	429	432	584	861	1034

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashley	429	432	584	791	794
Boone	438	441	597	834	1002
Calhoun	458	461	624	777	944
Chicot	431	434	584	861	1034
Clay	429	432	584	758	800
Columbia	429	432	584	822	825
Cross	489	493	636	875	1061
Desha	429	432	584	802	1005
Fulton	429	432	584	727	884
Hempstead	455	477	584	727	949
Howard	390	432	584	767	945
Izard	429	432	584	727	802
Johnson	445	448	601	749	921
Lawrence	429	432	584	777	929
Little River	418	432	584	727	1034
Marion	429	432	584	727	855
Monroe	429	432	584	794	1004
Nevada	429	432	584	754	1014
Ouachita	450	452	584	752	780
Pike	443	446	584	727	884
Pope	456	459	614	838	1087
Randolph	429	432	584	745	884
Scott	429	432	584	727	884
Sevier	455	463	584	750	819
Stone	429	432	584	750	884
Van Buren	455	493	584	741	884
Woodruff	429	432	584	861	884

CALIFORNIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bakersfield-Delano, CA MSA	631	636	832	1220	1474	Kern
Chico, CA MSA	527	660	870	1242	1541	Butte
El Centro, CA MSA	476	579	748	1102	1325	Imperial
Fresno, CA MSA	649	676	853	1199	1399	Fresno
Hanford-Corcoran, CA MSA	504	596	807	1147	1206	Kings
Los Angeles-Long Beach, CA HMFA	913	1103	1424	1926	2145	Los Angeles
Madera-Chowchilla, CA MSA	647	651	881	1280	1404	Madera
Merced, CA MSA	498	577	759	1118	1344	Merced
Modesto, CA MSA	583	720	923	1360	1578	Stanislaus
Napa, CA MSA	902	1131	1513	2159	2166	Napa
Oakland-Fremont, CA HMFA	1039	1260	1585	2213	2716	Alameda, Contra Costa
Orange County, CA HMFA	1117	1283	1608	2250	2505	Orange

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 4

CALIFORNIA continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Oxnard-Thousand Oaks-Ventura, CA MSA	969	1158	1555	2148	2486	Ventura
Redding, CA MSA	702	722	907	1337	1490	Shasta
*Riverside-San Bernardino-Ontario, CA MSA	788	908	1153	1629	1987	Riverside, San Bernardino
Sacramento--Arden-Arcade--Roseville, CA HMFA	676	806	1012	1491	1792	El Dorado, Placer, Sacramento
Salinas, CA MSA	879	987	1244	1814	2029	Monterey
San Benito County, CA HMFA	761	945	1279	1885	2265	San Benito
San Diego-Carlsbad-San Marcos, CA MSA	964	1060	1390	2021	2462	San Diego
San Francisco, CA HMFA	1256	1635	2062	2801	3386	Marin, San Francisco, San Mateo
San Jose-Sunnyvale-Santa Clara, CA HMFA	1213	1419	1809	2551	2892	Santa Clara
San Luis Obispo-Paso Robles, CA MSA	877	1014	1309	1929	2011	San Luis Obispo
Santa Barbara-Santa Maria-Goleta, CA MSA	1060	1218	1460	1951	2259	Santa Barbara
Santa Cruz-Watsonville, CA MSA	1073	1298	1756	2263	2525	Santa Cruz
Santa Rosa-Petaluma, CA MSA	898	1047	1370	2019	2367	Sonoma
Stockton, CA MSA	605	721	946	1394	1675	San Joaquin
Vallejo-Fairfield, CA MSA	765	964	1207	1779	2115	Solano
Visalia-Porterville, CA MSA	577	592	771	1136	1321	Tulare
Yolo, CA HMFA	757	818	1105	1628	1899	Yolo
Yuba City, CA MSA	551	664	850	1228	1454	Sutter, Yuba

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alpine	595	605	818	1019	1320	Amador	587	729	986	1308	1592
Calaveras	642	699	882	1300	1562	Colusa	569	573	775	1142	1373
Del Norte	613	617	835	1230	1343	Glenn	570	574	777	1121	1376
Humboldt	630	692	933	1375	1600	Inyo	728	758	901	1328	1596
Lake	626	630	853	1257	1270	Lassen	646	683	924	1292	1297
Mariposa	611	621	840	1046	1356	Mendocino	811	869	1147	1580	1910
Modoc	468	542	643	948	1131	Mono	842	962	1141	1421	1842
Nevada	1016	1023	1355	1997	2309	Plumas	512	636	861	1072	1416
Sierra	757	769	1040	1533	1679	Siskiyou	522	622	794	1158	1303
Tehama	467	580	785	1107	1269	Trinity	551	554	741	1092	1312
Tuolumne	580	704	952	1403	1408						

COLORADO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boulder, CO MSA	857	996	1232	1815	2157	Boulder
Colorado Springs, CO HMFA	531	659	856	1261	1516	El Paso
*Denver-Aurora-Broomfield, CO MSA	723	893	1156	1696	1967	Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson, Park
Fort Collins-Loveland, CO MSA	600	742	893	1316	1582	Larimer
Grand Junction, CO MSA	491	585	779	1148	1319	Mesa
Greeley, CO MSA	523	611	786	1153	1392	Weld
Pueblo, CO MSA	462	560	733	1049	1132	Pueblo
Teller County, CO HMFA	558	719	899	1298	1302	Teller

COLORADO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alamosa	528	550	654	815	874
Baca	519	542	643	948	987
Chaffee	571	575	778	1146	1336
Conejos	519	542	643	801	859
Crowley	472	475	643	805	1139
Delta	575	579	783	975	1350
Eagle	879	885	1198	1550	1970
Garfield	779	784	1061	1326	1879
Gunnison	576	653	883	1100	1478
Huerfano	479	482	652	812	871
Kiowa	514	518	672	837	966
Lake	665	720	974	1213	1495
Las Animas	516	520	703	978	982
Logan	394	489	662	824	978
Moffat	580	584	743	1095	1099
Montrose	496	574	776	1096	1374
Otero	383	475	643	801	859
Phillips	479	482	643	801	859
Prowers	472	475	643	804	875
Rio Grande	519	542	643	854	1139
Saguache	519	542	643	816	1139
San Miguel	812	1049	1284	1866	2220
Summit	750	1018	1261	1656	2106
Yuma	472	475	643	849	1001

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Archuleta	618	622	807	1055	1078
Bent	472	475	643	801	987
Cheyenne	472	475	643	881	987
Costilla	519	542	643	948	951
Custer	472	475	643	837	987
Dolores	519	542	643	948	987
Fremont	561	578	695	999	1077
Grand	633	637	862	1207	1211
Hinsdale	653	657	853	1169	1309
Jackson	562	565	734	914	1127
Kit Carson	472	475	643	801	1134
La Plata	695	740	921	1248	1604
Lincoln	500	504	643	801	987
Mineral	492	495	643	801	987
Montezuma	519	542	643	948	1139
Morgan	490	493	643	832	913
Ouray	733	738	999	1472	1617
Pitkin	874	1086	1469	1946	1963
Rio Blanco	509	513	694	1023	1074
Routt	661	890	1097	1502	1507
San Juan	663	759	1027	1513	1577
Sedgwick	519	542	643	915	918
Washington	472	475	643	801	868

CONNECTICUT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bridgeport, CT HMFA	803	1008	1283	1679	1818	Fairfield County towns of Bridgeport town, Easton town, Fairfield town, Monroe town, Shelton town, Stratford town, Trumbull town
Colchester-Lebanon, CT HMFA	770	840	1137	1416	1648	New London County towns of Colchester town, Lebanon town
Danbury, CT HMFA	1027	1170	1583	1973	2497	Fairfield County towns of Bethel town, Brookfield town, Danbury town, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town
*Hartford-West Hartford-East Hartford, CT HMFA	732	918	1144	1425	1655	Hartford County towns of Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford town, Hartland town, Manchester town, Marlborough town, New Britain town, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 6

CONNECTICUT continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Middlesex County towns of Chester town, Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown town, Portland town
						Tolland County towns of Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Union town, Vernon town, Willington town
Milford-Ansonia-Seymour, CT HMFA	958	1011	1249	1581	1762	New Haven County towns of Ansonia town, Beacon Falls town, Derby town, Milford town, Oxford town, Seymour town
*New Haven-Meriden, CT HMFA	874	1055	1316	1639	1818	New Haven County towns of Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, West Haven town, Woodbridge town
Norwich-New London, CT HMFA	716	805	1057	1353	1560	New London County towns of Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Lyme town, Montville town, New London town, North Stonington town, Norwich town, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Voluntown town, Waterford town
Southern Middlesex County, CT HMFA	891	897	1214	1689	1695	Middlesex County towns of Clinton town, Deep River town, Essex town, Killingworth town, Old Saybrook town, Westbrook town
Stamford-Norwalk, CT HMFA	1291	1564	1943	2420	3010	Fairfield County towns of Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town
Waterbury, CT HMFA	594	803	979	1219	1325	New Haven County towns of Middlebury town, Naugatuck town, Prospect town, Southbury town, Waterbury town, Wolcott town
NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Litchfield County, CT	790	802	1030	1305	1548	Barkhamsted town, Bethlehem town, Bridgewater town, Canaan town, Colebrook town, Cornwall town, Goshen town, Harwinton town, Kent town, Litchfield town, Morris town, New Hartford town, New Milford town, Norfolk town, North Canaan town, Plymouth town, Roxbury town, Salisbury town, Sharon town, Thomaston town, Torrington town, Warren town, Washington town, Watertown town, Winchester town, Woodbury town
Windham County, CT	567	711	953	1187	1329	Ashford town, Brooklyn town, Canterbury town, Chaplin town, Eastford town, Hampton town, Killingly town, Plainfield town, Pomfret town, Putnam town, Scotland town, Sterling town, Thompson town, Windham town, Woodstock town

DELAWARE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dover, DE MSA	649	830	984	1378	1738	Kent

DELAWARE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA..	814	959	1156	1440	1546	New Castle

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Sussex.....	713	730	987	1347	1568

DISTRICT OF COLUMBIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Washington-Arlington-Alexandria, DC-VA-MD HMFA....	1167	1230	1458	1951	2451	District of Columbia

FLORIDA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baker County, FL HMFA.....	491	614	728	972	1058	Baker
Cape Coral-Fort Myers, FL MSA.....	703	707	896	1216	1251	Lee
Crestview-Fort Walton Beach-Destin, FL MSA.....	719	724	905	1334	1559	Okaloosa
Deltona-Daytona Beach-Ormond Beach, FL MSA.....	569	731	900	1229	1324	Volusia
*Fort Lauderdale, FL HMFA.....	764	994	1263	1801	2237	Broward
Gainesville, FL MSA.....	676	695	883	1180	1534	Alachua, Gilchrist
Jacksonville, FL HMFA.....	628	775	931	1228	1502	Clay, Duval, Nassau, St. Johns
Lakeland-Winter Haven, FL MSA.....	637	641	830	1126	1370	Polk
Miami-Miami Beach-Kendall, FL HMFA.....	745	907	1162	1594	1863	Miami-Dade
Naples-Marco Island, FL MSA.....	691	795	990	1293	1592	Collier
North Port-Bradenton-Sarasota, FL MSA.....	675	750	960	1286	1511	Manatee, Sarasota
Ocala, FL MSA.....	504	625	783	1055	1059	Marion
Orlando-Kissimmee-Sanford, FL MSA.....	707	836	997	1330	1608	Lake, Orange, Osceola, Seminole
Palm Bay-Melbourne-Titusville, FL MSA.....	542	709	878	1216	1446	Brevard
Palm Coast, FL MSA.....	640	717	935	1217	1336	Flagler
Panama City-Lynn Haven-Panama City Beach, FL MSA..	703	747	886	1206	1524	Bay
Pensacola-Ferry Pass-Brent, FL MSA.....	613	698	828	1116	1448	Escambia, Santa Rosa
Port St. Lucie, FL MSA.....	684	758	939	1291	1522	Martin, St. Lucie
Punta Gorda, FL MSA.....	508	669	854	1213	1217	Charlotte
Sebastian-Vero Beach, FL MSA.....	532	659	821	1104	1109	Indian River
Tallahassee, FL HMFA.....	705	749	905	1160	1578	Gadsden, Jefferson, Leon
Tampa-St. Petersburg-Clearwater, FL MSA.....	610	765	959	1280	1533	Hernando, Hillsborough, Pasco, Pinellas
Wakulla County, FL HMFA.....	580	584	790	1065	1399	Wakulla
*West Palm Beach-Boca Raton, FL HMFA.....	752	965	1206	1628	1945	Palm Beach

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bradford.....	519	542	643	948	951	Calhoun.....	519	533	643	801	905
Citrus.....	600	604	770	1020	1270	Columbia.....	480	620	747	1101	1323
DeSoto.....	532	555	658	898	901	Dixie.....	519	542	643	939	942
Franklin.....	576	601	713	1051	1054	Glades.....	623	627	812	1054	1143
Gulf.....	567	592	702	1034	1038	Hamilton.....	519	533	643	801	940
Hardee.....	534	544	661	823	883	Hendry.....	556	560	757	998	1151

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 8

FLORIDA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Highlands	571	575	726	1070	1073	Holmes	519	542	643	881	905
Jackson	519	539	643	801	999	Lafayette	519	533	643	801	905
Levy	531	542	657	915	1164	Liberty	519	533	643	948	951
Madison	519	533	643	948	1066	Monroe	1200	1208	1635	2132	2185
Okeechobee	508	511	692	862	925	Putnam	519	522	644	802	861
Sumter	635	663	786	1158	1240	Suwannee	383	475	643	923	927
Taylor	519	542	643	948	1024	Union	472	475	643	834	860
Walton	592	596	807	1069	1078	Washington	472	475	643	852	905

GEORGIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany, GA MSA	478	542	653	904	928	Baker, Dougherty, Lee, Terrell, Worth
Athens-Clarke County, GA MSA	553	608	743	1007	1135	Clarke, Madison, Oconee, Oglethorpe
Atlanta-Sandy Springs-Marietta, GA HMFA	708	773	916	1213	1474	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Heard, Henry, Jasper, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, Walton
Augusta-Richmond County, GA-SC MSA	541	610	728	990	1226	Burke, Columbia, McDuffie, Richmond
Brunswick, GA MSA	515	518	701	873	982	Brantley, Glynn, McIntosh
Butts County, GA HMFA	570	574	776	999	1037	Butts
Chattanooga, TN-GA MSA	476	574	714	971	1094	Catoosa, Dade, Walker
Columbus, GA-AL MSA	536	628	745	1026	1319	Chattahoochee, Harris, Marion, Muscogee
Dalton, GA HMFA	495	536	653	838	1045	Whitfield
Gainesville, GA MSA	647	651	824	1069	1101	Hall
Haralson County, GA HMFA	474	477	646	908	1039	Haralson
Hinesville-Fort Stewart, GA HMFA	569	592	739	1043	1296	Liberty
Lamar County, GA HMFA	476	520	616	908	1005	Lamar
Long County, GA HMFA	454	473	590	807	1045	Long
Macon, GA MSA	488	586	695	960	1049	Bibb, Crawford, Jones, Twiggs
Meriwether County, GA HMFA	471	514	609	780	814	Meriwether
Monroe County, GA HMFA	446	536	635	936	1125	Monroe
Murray County, GA HMFA	454	457	616	776	1081	Murray
Rome, GA MSA	559	562	761	948	1346	Floyd
Savannah, GA MSA	633	778	922	1230	1459	Bryan, Chatham, Effingham
Valdosta, GA MSA	588	591	735	942	1121	Brooks, Echols, Lanier, Lowndes
Warner Robins, GA MSA	655	674	832	1067	1275	Houston

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Appling	473	494	586	730	856	Atkinson	349	433	586	730	783
Bacon	453	456	586	730	783	Baldwin	470	541	687	891	918
Banks	473	494	586	805	967	Ben Hill	455	458	609	758	814
Berrien	430	433	586	730	1025	Bleckley	430	433	586	864	887
Bulloch	438	494	629	911	1106	Calhoun	430	433	586	730	887
Camden	571	575	778	1081	1241	Candler	430	433	586	730	884
Charlton	430	433	586	814	887	Chattooga	430	433	586	787	1038

GEORGIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clay	482	485	614	765	930	Clinch	430	433	586	845	887
Coffee	437	440	586	853	1030	Colquitt	434	436	586	864	866
Cook	473	494	586	864	866	Crisp	443	446	586	730	969
Decatur	473	494	586	758	783	Dodge	473	494	586	864	1038
Dooly	473	494	586	864	918	Early	441	444	586	864	985
Elbert	473	478	586	864	887	Emanuel	430	433	586	816	922
Evans	473	476	586	738	783	Fannin	471	474	641	806	1135
Franklin	430	433	586	804	1038	Gilmer	507	510	667	831	1181
Glascock	430	433	586	730	783	Gordon	501	505	655	884	1092
Grady	436	439	594	741	879	Greene	449	452	612	853	912
Habersham	483	504	598	881	1059	Hancock	430	433	586	730	783
Hart	430	433	586	826	1038	Irwin	430	433	586	730	783
Jackson	501	505	683	851	973	Jeff Davis	473	494	586	798	801
Jefferson	473	480	586	730	783	Jenkins	453	456	586	826	907
Johnson	430	433	586	730	814	Laurens	473	494	586	811	814
Lincoln	430	433	586	864	1038	Lumpkin	514	517	700	944	947
Macon	473	494	586	730	959	Miller	430	433	586	840	864
Mitchell	474	477	646	805	863	Montgomery	473	494	586	730	887
Morgan	488	509	604	890	1033	Peach	358	444	601	819	822
Pierce	437	440	586	730	1038	Polk	457	460	622	807	909
Pulaski	430	433	586	864	887	Putnam	506	521	626	920	923
Quitman	473	494	586	864	887	Rabun	409	567	687	885	918
Randolph	430	433	586	774	887	Schley	430	433	586	817	1038
Screven	430	433	586	779	783	Seminole	473	494	586	804	807
Stephens	430	433	586	808	1038	Stewart	473	494	586	815	887
Sumter	498	509	616	842	845	Talbot	567	571	772	961	1169
Taliaferro	506	509	655	816	992	Tattnall	473	494	586	811	824
Taylor	349	456	586	845	887	Telfair	430	433	586	730	836
Thomas	474	477	640	893	896	Tift	469	474	609	771	999
Toombs	449	452	586	761	817	Towns	507	510	656	817	942
Treutlen	453	456	586	730	783	Troup	616	632	762	1041	1045
Turner	434	437	586	730	1038	Union	430	433	586	760	783
Upson	473	494	586	864	1038	Ware	387	433	586	730	783
Warren	473	480	586	864	866	Washington	473	494	586	765	1038
Wayne	430	433	586	733	783	Webster	461	464	596	742	903
Wheeler	453	456	586	845	995	White	517	520	704	968	1066
Wilcox	430	433	586	730	1006	Wilkes	441	444	586	864	1038
Wilkinson	430	433	586	730	887						

HAWAII

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Honolulu, HI MSA	1260	1374	1810	2667	3061	Honolulu

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 10

HAWAII continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hawaii	749	945	1151	1552	1943	Kalawao	462	514	643	852	974
Kauai	895	903	1222	1663	1969	Maui	870	979	1264	1742	1748

IDAHO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boise City-Nampa, ID HMFA	438	585	736	1085	1205	Ada, Boise, Canyon, Owyhee
Coeur d'Alene, ID MSA	493	587	743	1058	1303	Kootenai
Gem County, ID HMFA	391	486	657	968	1164	Gem
Idaho Falls, ID MSA	422	498	674	951	1194	Bonneville, Jefferson
Lewiston, ID-WA MSA	425	538	695	899	1231	Nez Perce
Logan, UT-ID MSA	487	490	649	934	1140	Franklin
Pocatello, ID MSA	383	482	643	948	1139	Bannock, Power

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	472	475	643	948	1124	Bear Lake	472	475	643	948	1124
Benewah	515	542	643	863	1139	Bingham	515	537	643	948	951
Blaine	714	719	947	1321	1392	Bonner	514	621	736	1072	1304
Boundary	472	475	643	801	1124	Butte	488	492	643	933	1124
Camas	508	511	648	895	1132	Caribou	504	507	643	900	1124
Cassia	383	477	643	948	1139	Clark	504	507	643	948	1124
Clearwater	515	542	643	886	1124	Custer	472	475	643	884	1124
Elmore	502	506	684	978	1211	Fremont	496	500	676	842	908
Gooding	498	501	643	904	1139	Idaho	488	491	643	901	1139
Jerome	424	494	643	937	957	Latah	520	523	670	987	1187
Lemhi	515	542	643	948	1124	Lewis	519	526	643	948	951
Lincoln	515	542	643	873	1139	Madison	511	514	660	973	1169
Minidoka	515	542	643	948	1012	Oneida	515	542	643	924	1097
Payette	499	503	680	954	1148	Shoshone	469	523	643	828	914
Teton	628	661	784	1054	1389	Twin Falls	465	511	664	872	1132
Valley	479	579	686	1011	1215	Washington	472	475	643	948	1124

ILLINOIS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	545	591	778	1095	1323	McLean
Bond County, IL HMFA	480	543	734	914	981	Bond
Cape Girardeau-Jackson, MO-IL MSA	378	470	636	825	1006	Alexander
Champaign-Urbana, IL MSA	521	654	796	1026	1382	Champaign, Ford, Piatt
*Chicago-Joliet-Naperville, IL HMFA	812	922	1093	1393	1624	Cook, DuPage, Kane, Lake, McHenry, Will
Danville, IL MSA	542	592	741	941	990	Vermilion
Davenport-Moline-Rock Island, IA-IL MSA	448	554	710	957	1008	Henry, Mercer, Rock Island
DeKalb County, IL HMFA	571	675	874	1240	1444	DeKalb
Decatur, IL MSA	412	526	686	954	1047	Macon

ILLINOIS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Grundy County, IL HMFA	558	693	938	1373	1377	Grundy
Kankakee-Bradley, IL MSA	540	686	906	1275	1538	Kankakee
Kendall County, IL HMFA	697	879	1171	1726	1805	Kendall
Macoupin County, IL HMFA	413	478	631	917	1003	Macoupin
Peoria, IL MSA	425	557	714	923	1108	Marshall, Peoria, Stark, Tazewell, Woodford
Rockford, IL MSA	481	551	741	1011	1148	Boone, Winnebago
Springfield, IL MSA	464	574	730	955	1006	Menard, Sangamon
St. Louis, MO-IL HMFA	533	633	816	1063	1206	Calhoun, Clinton, Jersey, Madison, Monroe, St. Clair

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	395	491	664	914	1067	Brown	796	989	1338	1666	1965
Bureau	400	504	672	928	932	Carroll	419	466	631	786	843
Cass	463	466	631	786	890	Christian	469	472	639	796	1016
Clark	419	466	631	786	843	Clay	419	532	631	786	927
Coles	465	468	633	933	981	Crawford	419	532	631	916	919
Cumberland	419	532	631	855	858	De Witt	419	466	631	826	1007
Douglas	463	515	697	868	957	Edgar	467	470	631	868	1118
Edwards	419	507	631	786	927	Effingham	463	466	631	930	1085
Fayette	478	515	631	786	955	Franklin	375	466	631	786	1052
Fulton	487	490	631	808	1065	Gallatin	419	532	631	930	933
Greene	419	532	631	786	1118	Hamilton	419	532	631	786	927
Hancock	375	506	631	786	843	Hardin	419	466	631	786	927
Henderson	419	521	631	787	843	Iroquois	467	470	631	872	1006
Jackson	422	508	687	909	1020	Jasper	419	532	631	930	1068
Jefferson	481	501	631	850	1097	Jo Daviess	419	532	631	838	843
Johnson	419	532	631	786	981	Knox	375	466	631	786	1118
La Salle	425	528	715	977	981	Lawrence	510	532	631	930	933
Lee	492	495	635	900	903	Livingston	472	503	669	905	908
Logan	419	466	631	878	881	McDonough	422	525	710	890	1067
Marion	419	480	631	898	901	Mason	419	466	631	786	1031
Massac	446	497	672	837	1190	Montgomery	433	550	652	812	1078
Morgan	394	490	663	826	886	Moultrie	419	532	631	885	922
Ogle	457	508	658	937	1101	Perry	463	466	631	793	1066
Pike	463	532	631	827	1103	Pope	419	532	631	930	933
Pulaski	419	532	631	786	843	Putnam	419	532	631	786	843
Randolph	420	471	633	854	967	Richland	419	466	631	901	904
Saline	463	466	631	908	1043	Schuyler	419	532	631	930	933
Scott	419	480	631	875	1046	Shelby	419	466	631	786	935
Stephenson	419	466	631	786	972	Union	419	466	631	834	843
Wabash	419	466	631	786	900	Warren	432	488	651	953	957
Washington	419	474	631	816	927	Wayne	419	532	631	856	927
White	417	532	631	790	864	Whiteside	461	496	635	791	878
Williamson	473	476	644	909	1141						

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 12

INDIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anderson, IN MSA	424	515	697	930	1014	Madison
Bloomington, IN HMFA	604	659	823	1148	1458	Monroe
Carroll County, IN HMFA	519	542	643	919	922	Carroll
Cincinnati-Middleton, OH-KY-IN HMFA	463	579	769	1065	1173	Dearborn, Franklin, Ohio
Columbus, IN MSA	619	677	843	1108	1144	Bartholomew
Elkhart-Goshen, IN MSA	472	585	763	988	1162	Elkhart
Evansville, IN-KY HMFA	520	558	721	918	1003	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	490	538	687	884	1002	Allen, Wells, Whitley
Gary, IN HMFA	479	646	805	1008	1076	Lake, Newton, Porter
Gibson County, IN HMFA	464	487	643	861	864	Gibson
Greene County, IN HMFA	383	475	643	801	967	Greene
Indianapolis, IN HMFA	516	637	792	1056	1232	Boone, Brown, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, Shelby
Jasper County, IN HMFA	522	526	711	886	950	Jasper
Kokomo, IN MSA	501	520	704	943	1030	Howard, Tipton
Lafayette, IN HMFA	532	609	768	1005	1263	Benton, Tippecanoe
Louisville, KY-IN HMFA	507	592	737	1020	1154	Clark, Floyd, Harrison
Michigan City-La Porte, IN MSA	462	537	726	961	970	LaPorte
Muncie, IN MSA	458	510	658	864	1165	Delaware
Owen County, IN HMFA	504	540	694	889	1229	Owen
Putnam County, IN HMFA	519	528	643	948	1088	Putnam
South Bend-Mishawaka, IN HMFA	524	596	763	956	1020	St. Joseph
Sullivan County, IN HMFA	520	543	644	946	949	Sullivan
Terre Haute, IN HMFA	403	501	678	844	991	Clay, Vermillion, Vigo
Washington County, IN HMFA	442	522	643	905	908	Washington

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	419	508	643	852	1046	Blackford	419	475	643	801	1137
Cass	419	475	643	801	1137	Clinton	400	497	673	859	966
Crawford	419	475	643	801	913	Daviess	419	475	643	923	926
Decatur	420	522	706	892	943	DeKalb	410	494	643	915	1078
Dubois	419	484	643	948	958	Fayette	456	492	659	844	881
Fountain	428	553	656	928	931	Fulton	421	516	645	803	862
Grant	432	514	694	918	1007	Henry	479	482	647	823	892
Huntington	402	486	647	830	865	Jackson	394	490	663	884	1021
Jay	419	496	643	894	943	Jefferson	383	498	643	878	916
Jennings	397	499	667	861	955	Knox	480	487	643	803	906
Kosciusko	491	563	753	974	1113	LaGrange	383	475	643	801	880
Lawrence	390	507	656	869	938	Marshall	442	503	678	844	906
Martin	419	542	643	948	999	Miami	383	542	643	890	1047
Montgomery	421	507	685	960	977	Noble	403	490	643	801	1103
Orange	419	475	643	876	1091	Parke	419	475	643	874	1139
Perry	419	484	643	913	929	Pike	419	542	643	948	1069
Pulaski	383	478	643	835	859	Randolph	419	496	643	895	1053
Ripley	389	483	654	815	938	Rush	419	475	643	826	859
Scott	434	492	666	914	1013	Spencer	383	475	643	801	859

INDIANA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Starke	458	553	656	853	877	Steuben	453	514	694	864	968
Switzerland	419	475	643	948	998	Union	427	552	654	964	1158
Wabash	419	475	643	801	859	Warren	419	542	643	875	879
Wayne	519	541	691	912	1027	White	419	542	643	874	877

IOWA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ames, IA MSA	505	591	737	1043	1220	Story
Benton County, IA HMFA	456	507	626	813	998	Benton
Bremer County, IA HMFA	414	446	603	824	827	Bremer
Cedar Rapids, IA HMFA	443	551	745	1009	1123	Linn
Davenport-Moline-Rock Island, IA-IL MSA	448	554	710	957	1008	Scott
Des Moines-West Des Moines, IA MSA	528	634	787	1095	1167	Dallas, Guthrie, Madison, Polk, Warren
Dubuque, IA MSA	459	568	737	988	1147	Dubuque
Iowa City, IA HMFA	526	630	802	1182	1420	Johnson
Jones County, IA HMFA	369	459	621	856	971	Jones
Omaha-Council Bluffs, NE-IA HMFA	480	642	807	1082	1202	Harrison, Mills, Pottawattamie
Sioux City, IA-NE-SD MSA	421	550	708	929	1045	Woodbury
Washington County, IA HMFA	411	491	619	912	1042	Washington
Waterloo-Cedar Falls, IA HMFA	463	537	674	895	1194	Black Hawk, Grundy

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	415	452	612	853	856	Adams	402	438	593	739	819
Allamakee	402	500	593	874	907	Appanoose	435	438	593	752	792
Audubon	402	478	593	739	979	Boone	376	467	632	829	981
Buchanan	443	446	593	768	962	Buena Vista	406	472	600	755	873
Butler	402	500	593	874	905	Calhoun	402	454	593	803	806
Carroll	469	472	593	739	847	Cass	396	485	593	802	854
Cedar	433	472	639	827	902	Cerro Gordo	390	485	656	858	877
Cherokee	402	445	593	739	792	Chickasaw	402	482	593	874	877
Clarke	451	492	666	829	1180	Clay	402	438	593	801	962
Clayton	420	500	593	836	959	Clinton	406	524	656	831	1044
Crawford	402	500	593	765	1050	Davis	419	496	619	771	855
Decatur	442	465	593	874	1050	Delaware	479	486	593	863	884
Des Moines	497	500	677	843	911	Dickinson	413	450	609	856	864
Emmet	402	470	593	750	819	Fayette	369	499	593	762	802
Floyd	402	458	593	835	838	Franklin	435	438	593	828	1014
Fremont	402	481	593	825	904	Greene	402	438	593	739	1050
Hamilton	436	476	644	802	1052	Hancock	402	438	593	739	862
Hardin	402	457	593	741	792	Henry	406	483	600	832	835
Howard	402	438	593	739	792	Humboldt	402	438	593	836	839
Ida	402	450	593	788	792	Iowa	402	467	593	874	1018
Jackson	402	500	593	874	877	Jasper	390	502	656	833	920

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 14

IOWA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Jefferson	461	508	681	848	910	Keokuk	402	450	593	825	828
Kossuth	402	438	593	788	830	Lee	408	445	602	826	829
Louisa	436	481	643	801	993	Lucas	402	438	593	779	997
Lyon	402	494	593	739	1015	Mahaska	464	467	602	770	926
Marion	553	563	684	852	1211	Marshall	449	521	641	827	911
Mitchell	402	500	593	874	877	Monona	402	438	593	792	795
Monroe	402	438	593	739	819	Montgomery	435	438	593	863	866
Muscatine	499	545	737	1011	1092	O'Brien	440	482	593	859	862
Osceola	427	514	630	785	842	Page	402	463	593	807	810
Palo Alto	402	498	593	874	1050	Plymouth	432	506	637	882	886
Pocahontas	402	460	593	739	1050	Poweshiek	442	523	653	858	910
Ringgold	402	481	593	744	900	Sac	355	444	593	768	792
Shelby	406	462	599	776	900	Sioux	402	468	593	813	816
Tama	413	450	609	763	890	Taylor	402	500	593	874	877
Union	402	442	593	795	968	Van Buren	402	500	593	833	836
Wapello	434	512	672	858	898	Wayne	402	438	593	874	877
Webster	477	480	593	843	879	Winnebago	402	471	593	874	907
Winneshiek	439	442	598	782	1059	Worth	392	500	593	751	792
Wright	402	467	593	739	792						

KANSAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Franklin County, KS HMFA	453	562	760	947	1209	Franklin
*Kansas City, MO-KS HMFA	559	719	891	1221	1360	Johnson, Leavenworth, Linn, Miami, Wyandotte
Lawrence, KS MSA	498	629	815	1193	1311	Douglas
Manhattan, KS MSA	586	590	776	1118	1374	Geary, Pottawatomie, Riley
St. Joseph, MO-KS MSA	469	507	677	868	1069	Doniphan
Sumner County, KS HMFA	469	472	639	850	1132	Sumner
Topeka, KS MSA	417	528	701	990	1202	Jackson, Jefferson, Osage, Shawnee, Wabaunsee
Wichita, KS HMFA	439	544	723	997	1099	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allen	412	535	634	873	876	Anderson	412	476	634	934	1123
Atchison	396	498	665	980	983	Barber	412	469	634	833	922
Barton	512	534	634	837	1091	Bourbon	420	484	655	816	1064
Brown	412	469	634	869	872	Chase	412	473	634	900	903
Chautauqua	429	557	660	925	960	Cherokee	412	469	634	860	1020
Cheyenne	412	469	634	790	847	Clark	412	523	634	825	1123
Clay	548	552	747	930	998	Cloud	412	484	634	934	937
Coffey	412	469	634	857	860	Comanche	412	535	634	825	922
Cowley	417	489	641	856	860	Crawford	439	523	675	995	1181
Decatur	412	471	634	790	922	Dickinson	412	484	634	875	1123

KANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Edwards	412	469	634	790	1061	Elk	412	535	634	934	937
Ellis	451	469	634	884	956	Ellsworth	412	494	634	813	922
Finney	453	543	697	881	1181	Ford	508	544	676	861	1041
Gove	412	535	634	805	922	Graham	412	535	634	934	937
Grant	412	471	634	912	922	Gray	412	518	634	849	852
Greeley	412	471	634	790	866	Greenwood	412	499	634	885	1030
Hamilton	461	528	710	884	1032	Harper	412	481	634	934	1116
Haskell	495	562	761	948	1189	Hodgeman	412	469	634	790	922
Jewell	412	535	634	865	905	Kearny	412	471	634	912	922
Kingman	417	541	642	800	1090	Kiowa	412	535	634	934	937
Labette	412	469	634	790	847	Lane	412	471	634	790	922
Lincoln	428	538	659	821	881	Logan	412	469	634	790	847
Lyon	377	469	634	857	861	McPherson	433	492	666	829	890
Marion	412	469	634	790	847	Marshall	491	495	634	845	1044
Meade	412	469	634	790	847	Mitchell	412	535	634	934	962
Montgomery	506	509	634	854	999	Morris	412	511	634	795	922
Morton	412	490	634	790	847	Nemaha	412	495	634	934	937
Neosho	412	469	634	841	847	Ness	412	535	634	790	989
Norton	412	535	634	907	922	Osborne	412	535	634	925	929
Ottawa	432	550	665	980	1178	Pawnee	412	469	634	790	847
Phillips	412	493	634	924	1064	Pratt	422	480	650	810	869
Rawlins	412	469	634	790	922	Reno	444	499	675	949	1011
Republic	412	469	634	790	847	Rice	412	483	634	858	969
Rooks	412	529	634	790	847	Rush	412	535	634	855	922
Russell	449	511	691	902	1034	Saline	533	544	694	897	1060
Scott	412	471	634	934	937	Seward	459	580	707	891	1048
Sheridan	412	469	634	790	847	Sherman	412	471	634	845	1123
Smith	412	506	634	934	937	Stafford	412	482	634	790	847
Stanton	412	471	634	856	902	Stevens	468	532	720	897	1047
Thomas	412	535	634	909	1123	Trego	413	470	636	937	940
Wallace	412	471	634	790	922	Washington	465	469	634	790	847
Wichita	432	502	665	828	967	Wilson	412	469	634	860	1123
Woodson	412	469	634	934	937						

KENTUCKY

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bowling Green, KY MSA	484	499	659	837	1012	Edmonson, Warren
Cincinnati-Middleton, OH-KY-IN HMFA	463	579	769	1065	1173	Boone, Bracken, Campbell, Gallatin, Kenton, Pendleton
Clarksville, TN-KY HMFA	525	599	781	1035	1122	Christian, Trigg
Elizabethtown, KY MSA	560	564	744	1096	1318	Hardin, Larue
Evansville, IN-KY HMFA	520	558	721	918	1003	Henderson, Webster
Grant County, KY HMFA	425	523	707	881	945	Grant

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 16

KENTUCKY continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Huntington-Ashland, WV-KY-OH MSA	380	519	638	843	1035	Boyd, Greenup
Lexington-Fayette, KY MSA	508	593	776	1105	1237	Bourbon, Clark, Fayette, Jessamine, Scott, Woodford
Louisville, KY-IN HMFA	507	592	737	1020	1154	Bullitt, Henry, Jefferson, Oldham, Spencer, Trimble
Meade County, KY HMFA	449	483	653	926	929	Meade
Nelson County, KY HMFA	442	509	643	948	965	Nelson
Owensboro, KY MSA	479	497	672	869	956	Daviess, Hancock, McLean
Shelby County, KY HMFA	520	523	708	951	1117	Shelby

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	410	412	558	822	825	Allen	419	471	558	822	825
Anderson	527	530	666	829	965	Ballard	410	412	558	765	913
Barren	416	418	566	793	894	Bath	419	469	558	822	825
Bell	344	447	558	783	786	Boyle	450	453	613	852	1086
Breathitt	419	471	558	695	776	Breckinridge	419	454	558	822	825
Butler	419	471	558	822	988	Caldwell	419	470	558	787	790
Calloway	462	520	625	892	896	Carlisle	422	473	561	699	750
Carroll	459	515	611	900	1031	Carter	419	471	558	780	988
Casey	410	412	558	760	782	Clay	419	471	558	822	988
Clinton	368	442	558	786	988	Crittenden	419	471	558	798	801
Cumberland	419	449	558	822	825	Elliott	419	442	558	695	782
Estill	419	436	558	695	946	Fleming	419	471	558	822	825
Floyd	426	473	567	715	1004	Franklin	414	549	672	990	994
Fulton	419	471	558	822	825	Garrard	437	491	582	813	816
Graves	419	421	558	695	820	Grayson	419	428	558	785	854
Green	419	471	558	766	769	Harlan	451	471	558	759	832
Harrison	332	412	558	695	842	Hart	410	412	558	695	746
Hickman	419	442	558	695	746	Hopkins	441	443	559	824	958
Jackson	534	600	711	909	997	Johnson	410	412	558	723	746
Knott	410	412	558	794	797	Knox	410	412	558	804	807
Laurel	424	476	564	746	999	Lawrence	419	430	558	720	962
Lee	419	471	558	820	823	Leslie	410	412	558	695	746
Letcher	419	456	558	695	746	Lewis	410	412	558	736	746
Lincoln	410	412	558	725	758	Livingston	419	471	558	822	825
Logan	413	420	558	695	746	Lyon	410	412	558	695	782
McCracken	483	486	618	770	826	McCreary	419	471	558	768	782
Madison	473	476	620	878	1098	Magoffin	410	412	558	695	782
Marion	429	432	585	729	782	Marshall	457	493	667	856	891
Martin	419	471	558	804	988	Mason	417	420	568	801	804
Menifee	419	471	558	714	782	Mercer	422	427	561	760	896
Metcalfe	423	426	576	717	807	Monroe	413	416	558	695	746
Montgomery	436	489	580	843	1027	Morgan	439	442	558	822	838
Muhlenberg	365	430	558	695	988	Nicholas	410	413	558	801	988
Ohio	416	419	558	790	988	Owen	428	431	583	756	1033

KENTUCKY continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Owsley	419	442	558	731	782
Pike	515	519	702	904	938
Pulaski	441	444	572	793	894
Rockcastle	419	426	558	795	835
Russell	342	412	558	739	933
Taylor	365	441	597	744	798
Union	445	456	558	770	782
Wayne	419	433	558	695	782
Wolfe	425	429	565	833	1001
Perry	419	471	558	695	746
Powell	410	412	558	798	809
Robertson	457	460	623	776	873
Rowan	410	528	648	807	1016
Simpson	445	448	593	739	831
Todd	419	469	558	808	810
Washington	472	530	628	851	855
Whitley	424	427	578	781	994

LOUISIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Alexandria, LA MSA	549	559	680	922	1058	Grant, Rapides
Baton Rouge, LA HMFA	548	669	797	993	1144	Ascension, East Baton Rouge, East Feliciana, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, West Feliciana
Houma-Bayou Cane-Thibodaux, LA MSA	475	547	740	957	1311	Lafourche, Terrebonne
Iberville Parish, LA HMFA	431	463	627	847	990	Iberville
Lafayette, LA MSA	477	636	754	989	1223	Lafayette, St. Martin
Lake Charles, LA MSA	536	565	712	949	1162	Calcasieu, Cameron
Monroe, LA MSA	508	512	675	841	902	Ouachita, Union
New Orleans-Metairie-Kenner, LA MSA	648	767	950	1192	1443	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany
Shreveport-Bossier City, LA MSA	604	677	842	1049	1148	Bossier, Caddo, De Soto

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Acadia	484	487	627	843	846
Assumption	493	529	627	924	958
Beauregard	506	520	627	837	1111
Caldwell	493	529	627	924	1050
Claiborne	493	529	627	924	1111
East Carroll	490	493	627	781	1108
Franklin	460	463	627	815	838
Jackson	481	500	627	924	1019
La Salle	469	472	627	864	945
Madison	460	463	627	802	838
Natchitoches	550	574	681	906	921
Richland	460	463	627	854	884
St. James	493	529	627	924	1001
St. Mary	476	479	639	897	960
Tensas	460	463	627	781	838
Vernon	526	652	882	1098	1179
Webster	493	507	627	822	838
Winn	493	529	627	842	846
Allen	493	525	627	887	890
Avoyelles	425	463	627	901	1089
Bienville	493	529	627	924	945
Catahoula	493	524	627	924	1010
Concordia	460	463	627	924	927
Evangeline	460	463	627	830	852
Iberia	523	527	713	888	953
Jefferson Davis	493	529	627	889	892
Lincoln	599	603	742	1029	1314
Morehouse	466	469	627	781	1025
Red River	512	549	651	959	981
Sabine	506	514	627	781	1111
St. Landry	421	463	627	786	838
Tangipahoa	547	702	832	1051	1231
Vermilion	519	557	660	963	1128
Washington	473	476	644	802	1020
West Carroll	460	463	627	898	935

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 18

MAINE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bangor, ME HMFA	571	660	833	1037	1205	Penobscot County towns of Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island Reservation, Veazie town
Cumberland County, ME (part) HMFA	559	703	932	1333	1588	Cumberland County towns of Baldwin town, Bridgton town, Brunswick town, Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
Lewiston-Auburn, ME MSA	499	591	772	973	1033	Androscoggin County towns of Auburn city, Durham town, Greene town, Leeds town, Lewiston city, Lisbon town, Livermore town, Livermore Falls town, Mechanic Falls town, Minot town, Poland town, Sabattus town, Turner town, Wales town
Penobscot County, ME (part) HMFA	448	562	666	932	1077	Penobscot County towns of Alton town, Argyle UT, Bradford town, Bradley town, Burlington town, Carmel town, Carroll plantation, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penobscot UT, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Howland town, Hudson town, Kingman UT, Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Newport town, North Penobscot UT, Passadumkeag town, Patten town, Plymouth town, Prentiss UT, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly UT, Webster plantation, Whitney UT, Winn town, Woodville town
Portland, ME HMFA	730	869	1074	1421	1492	Cumberland County towns of Cape Elizabeth town, Chebeague Island town, Casco town, Cumberland town, Falmouth town, Freeport town, Frye Island town, Gorham town, Gray town, Long Island town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town York County towns of Buxton town, Hollis town, Limington town, Old Orchard Beach town
Sagadahoc County, ME HMFA	693	736	873	1132	1425	Sagadahoc County towns of Arrowsic town, Bath city, Bowdoin town, Bowdoinham town, Georgetown town, Perkins UT, Phippsburg town, Richmond town, Topsham town, West Bath town, Woolwich town
York County, ME (part) HMFA	627	724	917	1245	1289	York County towns of Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town
York-Kittery-South Berwick, ME HMFA	786	860	1132	1527	1533	York County towns of Berwick town, Eliot town, Kittery town, South Berwick town, York town

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Aroostook County, ME	548	564	679	860	942	Allagash town, Amity town, Ashland town, Bancroft town, Blaine town, Bridgewater town, Caribou city, Cary plantation, Castle Hill town, Caswell town, Central Aroostook UT, Chapman town, Connor UT, Crystal town, Cyr plantation, Dyer Brook town, Eagle Lake town, Easton town, Fort Fairfield town, Fort Kent town, Frenchville town, Garfield plantation, Glenwood plantation, Grand Isle town, Hamlin town, Hammond town, Haynesville town, Hersey town, Hodgdon town, Houlton town, Island Falls town, Limestone town, Linneus town, Littleton town, Ludlow town, Macwahoc plantation, Madawaska town, Mapleton town, Mars Hill town, Masardis town, Merrill town, Monticello town, Moro plantation, Nashville plantation, New Canada town, New Limerick town, New Sweden town, Northwest Aroostook UT, Oakfield town, Orient town, Oxbow plantation, Penobscot Indian Island Reservation, Perham town, Portage Lake town, Presque Isle city, Reed plantation, St. Agatha town, St. Francis town, St. John plantation, Sherman town, Smyrna town, South Aroostook UT, Square Lake UT, Stockholm town, Van Buren town, Wade town, Wallagrass town, Washburn town, Westfield town, Westmanland town, Weston town, Winterville plantation, Woodland town
Franklin County, ME	573	598	709	883	1256	Avon town, Carrabassett Valley town, Carthage town, Chesterville town, Coplin plantation, Dallas plantation, East Central Franklin UT, Eustis town, Farmington town, Industry town, Jay town, Kingfield town, Madrid town, New Sharon town, New Vineyard town, North Franklin UT, Phillips town, Rangeley town, Rangeley plantation, Sandy River plantation, South Franklin UT, Strong town, Temple town, Weld town, West Central Franklin UT, Wilton town, Wyman UT
Hancock County, ME	588	666	848	1116	1133	Amherst town, Aurora town, Bar Harbor town, Blue Hill town, Brooklin town, Brooksville town, Bucksport town, Castine town, Central Hancock UT, Cranberry Isles town, Dedham town, Deer Isle town, Eastbrook town, East Hancock UT, Ellsworth city, Franklin town, Frenchboro town, Gouldsboro town, Great Pond town, Hancock town, Lamoine town, Mariaville town, Marshall Island UT, Mount Desert town, Northwest Hancock UT, Orland town, Osborn town, Otis town, Penobscot town, Sedgwick town, Sorrento town, Southwest Harbor town, Stonington town, Sullivan town, Surry town, Swans Island town, Tremont town, Trenton town, Verona Island town, Waltham town, Winter Harbor town
Kennebec County, ME	518	599	766	961	1024	Albion town, Augusta city, Belgrade town, Benton town, Chelsea town, China town, Clinton town, Farmingdale town, Fayette town, Gardiner city, Hallowell city, Litchfield town, Manchester town, Monmouth town, Mount Vernon town, Oakland town, Pittston town, Randolph town, Readfield town,

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 20

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Rome town, Sidney town, Unity UT, Vassalboro town, Vienna town, Waterville city, Wayne town, West Gardiner town, Windsor town, Winslow town, Winthrop town
Knox County, ME	743	748	922	1182	1232	Appleton town, Camden town, Criehaven UT, Cushing town, Friendship town, Hope town, Isle au Haut town, Matinicus Isle plantation, Muscle Ridge Island UT, North Haven town, Owls Head town, Rockland city, Rockport town, St. George town, South Thomaston town, Thomaston town, Union town, Vinalhaven town, Warren town, Washington town
Lincoln County, ME	504	672	847	1055	1132	Alna town, Boothbay town, Boothbay Harbor town, Bremen town, Bristol town, Damariscotta town, Dresden town, Edgecomb town, Hibberts gore, Jefferson town, Louds Island UT, Monhegan plantation, Newcastle town, Nobleboro town, Somerville town, South Bristol town, Southport town, Waldoboro town, Westport Island town, Whitefield town, Wiscasset town
Oxford County, ME	515	547	689	930	1204	Andover town, Bethel town, Brownfield town, Buckfield town, Byron town, Canton town, Denmark town, Dixfield town, Fryeburg town, Gilead town, Greenwood town, Hanover town, Hartford town, Hebron town, Hiram town, Lincoln plantation, Lovell town, Magalloway plantation, Mexico town, Milton UT, Newry town, North Oxford UT, Norway town, Otisfield town, Oxford town, Paris town, Peru town, Porter town, Roxbury town, Rumford town, South Oxford UT, Stoneham town, Stow town, Sumner town, Sweden town, Upton town, Waterford town, West Paris town, Woodstock town
Piscataquis County, ME	491	554	657	852	900	Abbot town, Atkinson town, Beaver Cove town, Blanchard UT, Bowerbank town, Brownville town, Dover-Foxcroft town, Greenville town, Guilford town, Kingsbury plantation, Lake View plantation, Medford town, Milo town, Monson town, Northeast Piscataquis UT, Northwest Piscataquis UT, Parkman town, Sangerville town, Sebec town, Shirley town, Southeast Piscataquis UT, Wellington town, Willimantic town
Somerset County, ME	599	627	746	1015	1019	Anson town, Athens town, Bingham town, Brighton plantation, Cambridge town, Canaan town, Caratunk town, Central Somerset UT, Cornville town, Dennistown plantation, Detroit town, Embden town, Fairfield town, Harmony town, Hartland town, Highland plantation, Jackman town, Madison town, Mercer town, Moose River town, Moscow town, New Portland town, Norridgewock town, Northeast Somerset UT, Northwest Somerset UT, Palmyra town, Pittsfield town, Pleasant Ridge plantation, Ripley town, St. Albans town, Seboomook Lake UT, Skowhegan town, Smithfield town, Solon town, Starks town, The Forks plantation, West Forks plantation
Waldo County, ME	559	670	794	1081	1150	Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town,

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Washington County, ME	520	572	681	868	1053	Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs town, Swanville town, Thorndike town, Troy town, Unity town, Waldo town, Winterport town Addison town, Alexander town, Baileyville town, Baring plantation, Beals town, Beddington town, Calais city, Centerville town, Charlotte town, Cherryfield town, Codyville plantation, Columbia town, Columbia Falls town, Cooper town, Crawford town, Cutler town, Danforth town, Deblois town, Dennysville town, East Central Washington UT, East Machias town, Eastport city, Grand Lake Stream plantation, Harrington town, Jonesboro town, Jonesport town, Lubec town, Machias town, Machiasport town, Marshfield town, Meddybemps town, Milbridge town, Northfield town, North Washington UT, Passamaquoddy Indian Township Reservation, Passamaquoddy Pleasant Point Reservation, Pembroke town, Perry town, Princeton town, Robbinston town, Roque Bluffs town, Steuben town, Talmadge town, Topsfield town, Vanceboro town, Waite town, Wesley town, Whiting town, Whitneyville town

MARYLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Baltimore-Towson, MD HMFA	833	985	1232	1574	1713	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city
Columbia city, MD HMFA	1055	1316	1567	2008	2202	Columbia city
Cumberland, MD-WV MSA	459	542	643	875	997	Allegany
Hagerstown, MD HMFA	545	662	857	1186	1203	Washington
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	814	959	1156	1440	1546	Cecil
Salisbury, MD HMFA	549	681	922	1186	1308	Wicomico
Somerset County, MD HMFA	415	589	698	878	965	Somerset
Washington-Arlington-Alexandria, DC-VA-MD HMFA	1167	1230	1458	1951	2451	Calvert, Charles, Frederick, Montgomery, Prince George's

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Caroline	617	622	841	1120	1257	Dorchester	649	680	836	1041	1117
Garrett	508	545	654	832	874	Kent	636	640	866	1139	1534
St. Mary's	834	1045	1239	1801	2187	Talbot	796	801	1043	1299	1792
Worcester	580	663	881	1097	1337						

MASSACHUSETTS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Barnstable Town, MA MSA	825	920	1234	1614	1695	Barnstable County towns of Barnstable Town city, Bourne town, Brewster town, Chatham town, Dennis town, Eastham town,

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 22

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Falmouth town, Harwich town, Mashpee town, Orleans town, Provincetown town, Sandwich town, Truro town, Wellfleet town, Yarmouth town
Berkshire County, MA (part) HMFA.....	675	705	836	1059	1291	Berkshire County towns of Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Boston-Cambridge-Quincy, MA-NH HMFA.....	1071	1196	1494	1861	2023	Essex County towns of Amesbury Town city, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester-by-the-Sea town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town Middlesex County towns of Acton town, Arlington town, Ashby town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown city, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city Norfolk County towns of Bellingham town, Braintree Town city, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin Town city, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth Town city, Wrentham town Plymouth County towns of Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town Suffolk County towns of Boston city, Chelsea city, Revere city, Winthrop Town city
Brockton, MA HMFA.....	862	867	1133	1446	1531	Norfolk County towns of Avon town Plymouth County towns of Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Marion town, Mattapoisett town, Middleborough town, Plympton town, Rochester town, West Bridgewater town, Whitman town

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Eastern Worcester County, MA HMFA	700	795	1076	1340	1438	Worcester County towns of Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town
Easton-Raynham, MA HMFA	922	1016	1286	1833	1839	Bristol County towns of Easton town, Raynham town
Fitchburg-Leominster, MA HMFA	610	828	1025	1277	1518	Worcester County towns of Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town
Franklin County, MA (part) HMFA	678	732	927	1199	1461	Franklin County towns of Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield Town city, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Lawrence, MA-NH HMFA	798	910	1168	1455	1561	Essex County towns of Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen city, North Andover town, West Newbury town
Lowell, MA HMFA	750	864	1109	1381	1627	Middlesex County towns of Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town
New Bedford, MA HMFA	673	712	844	1051	1128	Bristol County towns of Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city
Pittsfield, MA HMFA	550	708	839	1045	1178	Berkshire County towns of Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Providence-Fall River, RI-MA HMFA	686	773	944	1176	1407	Bristol County towns of Attleboro city, Fall River city, North Attleborough town, Rehoboth town, Seekonk town, Somerset town, Swansea town, Westport town
Springfield, MA HMFA	616	739	924	1154	1314	Franklin County towns of Sunderland town Hampden County towns of Agawam Town city, Blandford town, Brimfield town, Chester town, Chicopee city, East Longmeadow town, Granville town, Hampden town, Holland town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer Town city, Russell town, Southwick town, Springfield city, Tolland town, Wales town, Westfield city, West Springfield Town city, Wilbraham town Hampshire County towns of Amherst town, Belchertown town, Chesterfield town, Cummington town, Easthampton Town city, Goshen town, Granby town, Hadley town, Hatfield town, Huntington town, Middlefield town, Northampton city, Pelham town, Plainfield town, Southampton town, South Hadley town, Ware town, Westhampton town, Williamsburg town, Worthington town
Taunton-Mansfield-Norton, MA HMFA	760	802	1043	1299	1394	Bristol County towns of Berkley town, Dighton town, Mansfield town, Norton town, Taunton city
Western Worcester County, MA HMFA	531	688	816	1058	1445	Worcester County towns of Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town,

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 24

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Worcester, MA HMFA	674	823	1036	1290	1411	Phillipston town, Royalston town, Warren town Worcester County towns of Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge Town city, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westborough town, West Boylston town, West Brookfield town, Worcester city

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Dukes County, MA	770	957	1295	1682	1731	Aquinnah town, Chilmark town, Edgartown town, Gosnold town, Oak Bluffs town, Tisbury town, West Tisbury town
Nantucket County, MA	935	1161	1571	2205	2213	Nantucket town

MICHIGAN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ann Arbor, MI MSA	675	813	964	1318	1707	Washtenaw
Barry County, MI HMFA	456	479	648	849	905	Barry
Battle Creek, MI MSA	418	547	689	869	964	Calhoun
Bay City, MI MSA	418	549	702	936	1107	Bay
Cass County, MI HMFA	523	526	689	990	993	Cass
Detroit-Warren-Livonia, MI HMFA	510	648	846	1128	1233	Lapeer, Macomb, Oakland, St. Clair, Wayne
Flint, MI MSA	424	548	712	929	1049	Genesee
Grand Rapids-Wyoming, MI HMFA	519	588	737	1028	1157	Kent
Holland-Grand Haven, MI MSA	590	616	730	1008	1077	Ottawa
Ionia County, MI HMFA	512	515	680	916	990	Ionia
Jackson, MI MSA	483	560	728	1001	1005	Jackson
Kalamazoo-Portage, MI MSA	472	573	728	958	1166	Kalamazoo, Van Buren
Lansing-East Lansing, MI MSA	490	624	776	1032	1251	Clinton, Eaton, Ingham
Livingston County, MI HMFA	520	728	863	1250	1501	Livingston
Monroe, MI MSA	475	595	798	1028	1216	Monroe
Muskegon-Norton Shores, MI MSA	419	521	705	961	1100	Muskegon
Newaygo County, MI HMFA	502	505	644	845	1042	Newaygo
Niles-Benton Harbor, MI MSA	492	559	730	982	1143	Berrien
Saginaw-Saginaw Township North, MI MSA	419	556	699	931	1072	Saginaw

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcona	448	475	643	856	1139	Alger	448	475	643	801	1032
Allegan	576	586	713	927	964	Alpena	411	520	643	948	1122
Antrim	391	497	658	893	1124	Arenac	485	526	643	920	1139
Baraga	448	475	643	801	886	Benzie	549	574	680	1002	1204
Branch	512	515	655	895	898	Charlevoix	533	545	660	822	1043

MICHIGAN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Cheboygan	448	531	643	948	951	Chippewa	465	505	667	831	891
Clare	448	475	643	801	859	Crawford	452	479	648	820	1148
Delta	482	486	643	948	1035	Dickinson	448	480	643	801	1139
Emmet	553	565	764	976	1328	Gladwin	448	542	643	948	1139
Gogebic	442	475	643	880	1013	Grand Traverse	591	621	825	1105	1109
Gratiot	448	475	643	823	1030	Hillsdale	393	492	643	883	886
Houghton	465	475	643	801	917	Huron	448	532	643	936	1005
Iosco	519	542	643	948	1139	Iron	466	475	643	821	859
Isabella	424	573	679	901	1103	Kalkaska	478	506	685	946	950
Keweenaw	592	628	849	1251	1255	Lake	448	475	643	884	1135
Leelanau	528	645	765	953	1022	Lenawee	617	624	764	952	1059
Luce	448	497	643	914	928	Mackinac	448	542	643	813	921
Manistee	448	475	643	813	859	Marquette	476	541	691	861	923
Mason	459	486	658	861	879	Mecosta	468	542	643	895	902
Menominee	448	489	643	852	994	Midland	615	619	803	1183	1301
Missaukee	448	542	643	908	911	Montcalm	480	510	643	910	1032
Montmorency	450	498	674	939	1194	Oceana	486	490	643	815	1047
Ogemaw	452	499	649	808	867	Ontonagon	501	504	643	851	921
Osceola	448	475	643	912	969	Oscoda	482	511	692	862	925
Otsego	462	490	663	933	1004	Presque Isle	448	494	643	908	1139
Roscommon	448	494	643	848	1018	St. Joseph	458	523	648	858	925
Sanilac	448	475	643	839	938	Schoolcraft	448	475	643	801	1139
Shiawassee	397	494	668	840	893	Tuscola	384	514	643	889	1055
Wexford	415	539	698	956	960						

MINNESOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Duluth, MN-WI MSA	478	574	755	984	1096	Carlton, St. Louis
Fargo, ND-MN MSA	456	553	715	1054	1246	Clay
Grand Forks, ND-MN MSA	441	537	719	973	1173	Polk
La Crosse, WI-MN MSA	433	542	728	1012	1232	Houston
Mankato-North Mankato, MN MSA	562	642	804	1104	1424	Blue Earth, Nicollet
Minneapolis-St. Paul-Bloomington, MN-WI MSA	641	796	996	1403	1656	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright
Rochester, MN HMFA	600	651	877	1175	1553	Dodge, Olmsted
St. Cloud, MN MSA	584	603	723	955	1281	Benton, Stearns
Wabasha County, MN HMFA	512	516	643	948	1007	Wabasha

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aitkin	504	583	691	1018	1224	Becker	428	517	643	849	859
Beltrami	478	563	740	1021	1056	Big Stone	428	541	643	801	859
Brown	428	542	643	801	859	Cass	500	535	703	876	1245
Chippewa	428	542	643	948	951	Clearwater	441	489	662	826	1163

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 26

MINNESOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Cook	507	538	721	922	1050	Cottonwood	428	475	643	948	951
Crow Wing	444	550	744	1096	1100	Douglas	438	486	657	894	1104
Faribault	428	506	643	948	951	Fillmore	519	540	643	923	991
Freeborn	428	475	643	801	859	Goodhue	489	557	754	1100	1312
Grant	428	542	643	948	951	Hubbard	418	475	643	937	1088
Itasca	444	551	746	929	997	Jackson	428	499	643	917	1082
Kanabec	493	548	741	984	990	Kandiyohi	480	484	651	814	1046
Kittson	428	542	643	901	994	Koochiching	428	475	643	801	936
Lac qui Parle	428	475	643	801	985	Lake	461	542	733	1041	1067
Lake of the Woods	433	481	651	811	948	Le Sueur	433	481	651	813	1067
Lincoln	428	542	643	801	859	Lyon	482	487	643	948	951
McLeod	514	517	679	935	1000	Mahnomen	428	475	643	801	938
Marshall	503	513	643	889	892	Martin	386	479	648	807	1002
Meeker	428	595	720	897	962	Mille Lacs	434	562	730	909	976
Morrison	491	494	643	828	859	Mower	457	523	686	924	1121
Murray	428	542	643	801	1139	Nobles	519	542	643	948	1055
Norman	428	477	643	948	951	Otter Tail	428	512	643	918	944
Pennington	383	475	643	801	1139	Pine	514	599	772	1012	1165
Pipestone	428	542	643	946	1042	Pope	473	526	711	886	950
Red Lake	428	499	643	918	936	Redwood	428	475	643	865	1139
Renville	428	538	643	801	879	Rice	503	625	846	1227	1233
Rock	472	475	643	801	861	Roseau	428	475	643	801	958
Sibley	428	506	643	948	1015	Steele	437	576	734	1012	1300
Stevens	509	513	643	801	859	Swift	428	475	643	947	1139
Todd	468	520	703	1016	1080	Traverse	428	475	643	801	859
Wadena	428	540	643	847	1139	Waseca	428	475	643	948	1139
Watonwan	428	479	643	948	951	Wilkin	428	485	643	865	936
Winona	448	519	675	892	1038	Yellow Medicine	428	484	643	946	1118

MISSISSIPPI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Gulfport-Biloxi, MS MSA	653	673	808	1039	1107	Hancock, Harrison, Stone
Hattiesburg, MS MSA	546	577	739	990	1041	Forrest, Lamar, Perry
Jackson, MS HMFA	464	646	780	971	1067	Copiah, Hinds, Madison, Rankin
Marshall County, MS HMFA	476	479	648	931	1148	Marshall
Memphis, TN-MS-AR HMFA	614	702	832	1137	1267	DeSoto
Pascagoula, MS MSA	589	593	744	1022	1029	George, Jackson
Simpson County, MS HMFA	369	523	620	777	829	Simpson
Tate County, MS HMFA	523	527	713	888	1233	Tate
Tunica County, MS HMFA	531	551	746	929	1136	Tunica

MISSISSIPPI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	450	558	661	867	1118	Alcorn	422	523	620	841	929
Amite	422	523	620	846	1021	Attala	422	523	620	914	917
Benton	422	523	620	797	829	Bolivar	455	458	620	772	829
Calhoun	369	466	620	875	1066	Carroll	422	510	620	887	890
Chickasaw	384	458	620	772	829	Choctaw	422	493	620	914	917
Claiborne	422	523	620	819	829	Clarke	432	535	634	934	937
Clay	458	497	673	838	899	Coahoma	376	533	632	787	845
Covington	422	510	620	914	1079	Franklin	422	458	620	914	917
Greene	422	484	620	914	917	Grenada	422	518	620	782	829
Holmes	422	523	620	772	829	Humphreys	422	458	620	903	906
Issaquena	422	510	620	914	917	Itawamba	422	523	620	914	917
Jasper	422	523	620	914	1002	Jefferson	422	458	620	838	841
Jefferson Davis	422	472	620	914	917	Jones	444	629	746	947	997
Kemper	430	467	632	787	845	Lafayette	571	659	838	1068	1120
Lauderdale	489	606	718	1026	1272	Lawrence	436	541	641	799	1135
Leake	422	523	620	847	868	Lee	384	545	646	879	882
Leflore	504	516	624	777	845	Lincoln	418	458	620	816	1000
Lowndes	416	534	633	886	889	Marion	422	488	620	772	841
Monroe	422	458	620	793	829	Montgomery	422	510	620	870	974
Neshoba	428	519	628	845	971	Newton	445	483	654	915	1158
Noxubee	422	523	620	914	917	Oktibbeha	585	613	732	1049	1257
Panola	423	524	621	850	854	Pearl River	443	480	650	951	955
Pike	447	485	656	817	877	Pontotoc	422	458	620	838	1056
Prentiss	422	487	620	865	886	Quitman	369	523	620	772	829
Scott	369	484	620	774	1009	Sharkey	422	523	620	772	829
Smith	422	458	620	772	935	Sunflower	432	458	620	812	920
Tallahatchie	501	523	620	914	917	Tippah	422	523	620	824	921
Tishomingo	422	466	620	903	942	Union	422	523	620	914	1098
Walthall	454	548	666	829	890	Warren	537	540	688	858	947
Washington	491	495	620	867	871	Wayne	422	458	620	775	1098
Webster	501	523	620	914	1098	Wilkinson	422	458	620	772	829
Winston	422	510	620	896	899	Yalobusha	422	523	620	914	1098
Yazoo	443	481	651	812	870						

MISSOURI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bates County, MO HMFA	391	461	624	840	843	Bates
Calloway County, MO HMFA	452	455	616	826	899	Callaway
Cape Girardeau-Jackson, MO-IL MSA	378	470	636	825	1006	Bollinger, Cape Girardeau
Columbia, MO MSA	537	551	710	1039	1256	Boone, Howard
Dallas County, MO HMFA	407	499	604	752	807	Dallas
Jefferson City, MO HMFA	359	446	604	841	869	Cole, Osage

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 28

MISSOURI continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Joplin, MO MSA	462	469	625	854	857	Jasper, Newton
*Kansas City, MO-KS HMFA	559	719	891	1221	1360	Caldwell, Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
McDonald County, MO HMFA	447	450	604	890	915	McDonald
Moniteau County, MO HMFA	359	446	604	772	881	Moniteau
Polk County, MO HMFA	411	446	604	861	1070	Polk
Springfield, MO HMFA	441	485	654	963	967	Christian, Greene, Webster
St. Joseph, MO-KS MSA	469	507	677	868	1069	Andrew, Buchanan, DeKalb
St. Louis, MO-IL HMFA	533	633	816	1063	1206	Sullivan city part of Crawford, Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city
Washington County, MO HMFA	488	509	604	843	893	Washington

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	377	505	604	788	1070	Atchison	399	448	604	890	893
Audrain	473	529	716	978	1106	Barry	391	509	604	780	807
Barton	359	462	604	760	807	Benton	411	460	623	918	921
Butler	380	457	604	752	811	Camden	438	560	664	946	1176
Carroll	467	470	604	752	807	Carter	399	509	604	890	933
Cedar	427	478	647	909	1000	Chariton	399	446	604	752	807
Clark	359	467	604	788	933	Cooper	408	473	618	911	987
Crawford	496	501	618	770	921	Dade	399	463	604	820	823
Daviess	399	453	604	890	933	Dent	405	462	614	869	872
Douglas	399	509	604	832	835	Dunklin	443	446	604	890	893
Gasconade	399	467	604	890	1036	Gentry	409	458	620	851	947
Grundy	395	505	604	890	997	Harrison	415	491	628	782	839
Henry	426	483	645	914	1123	Hickory	421	446	604	752	807
Holt	399	446	604	789	931	Howell	359	461	604	772	1070
Iron	399	509	604	805	1070	Johnson	505	524	695	1024	1051
Knox	399	458	604	890	933	Laclede	399	509	604	834	966
Lawrence	458	461	604	858	1070	Lewis	443	446	604	783	933
Linn	443	446	604	811	814	Livingston	443	446	604	798	807
Macon	443	446	604	826	928	Madison	432	483	654	836	874
Maries	399	509	604	890	988	Marion	360	446	604	753	942
Mercer	399	446	604	831	933	Miller	452	511	638	804	853
Mississippi	389	455	615	790	822	Monroe	399	446	604	752	818
Montgomery	411	460	623	785	1103	Morgan	362	449	608	757	860
New Madrid	483	486	604	786	807	Nodaway	484	487	608	762	896
Oregon	399	509	604	807	973	Ozark	399	509	604	752	933
Pemiscot	399	474	604	777	807	Perry	434	486	657	924	1070
Pettis	496	499	675	891	983	Phelps	389	483	654	889	1021
Pike	399	446	604	879	882	Pulaski	465	649	781	1151	1383
Putnam	399	446	604	752	933	Ralls	422	539	639	942	1098
Randolph	378	474	635	791	1125	Reynolds	399	482	604	752	807

MISSOURI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ripley	399	446	604	890	917	St. Clair	399	495	604	752	807
Ste. Genevieve	462	465	629	885	972	St. Francois	484	487	659	889	975
Saline	399	446	604	820	927	Schuyler	412	446	604	890	1070
Scotland	399	446	604	769	933	Scott	359	446	604	760	831
Shannon	359	446	604	752	933	Shelby	399	446	604	819	822
Stoddard	399	452	604	812	815	Stone	414	514	696	867	930
Sullivan	493	496	671	943	1037	Taney	497	527	654	815	1158
Texas	359	446	604	890	1010	Vernon	410	485	656	867	877
Wayne	399	509	604	831	1070	Worth	399	446	604	774	933
Wright	399	446	604	762	1062						

MONTANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA	485	538	728	1007	1010	Carbon, Yellowstone
Great Falls, MT MSA	485	505	648	937	955	Cascade
Missoula, MT MSA	558	604	755	1083	1337	Missoula

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaverhead	472	475	643	948	1019	Big Horn	469	542	643	912	915
Blaine	533	540	730	909	976	Broadwater	585	592	801	998	1270
Carter	469	529	643	903	1019	Chouteau	469	542	643	948	961
Custer	454	539	643	937	941	Daniels	469	496	643	878	1019
Dawson	469	482	643	923	1139	Deer Lodge	469	542	643	948	1104
Fallon	469	529	643	948	1019	Fergus	504	560	690	902	1222
Flathead	571	668	827	1219	1465	Gallatin	569	615	771	1136	1366
Garfield	469	496	643	903	1019	Glacier	519	542	643	948	1022
Golden Valley	469	542	643	801	1019	Granite	545	551	746	929	1183
Hill	469	484	643	948	951	Jefferson	598	605	819	1020	1095
Judith Basin	469	542	643	917	1019	Lake	402	569	675	870	1130
Lewis and Clark	578	582	785	1060	1258	Liberty	469	496	643	903	1019
Lincoln	519	542	643	905	1139	McCone	469	496	643	948	1139
Madison	569	658	780	971	1042	Meagher	469	475	643	801	1019
Mineral	469	534	643	889	892	Musselshell	469	475	643	893	1019
Park	469	582	788	981	1395	Petroleum	527	557	722	1014	1144
Phillips	469	506	643	903	1019	Pondera	469	542	643	948	1139
Powder River	646	682	885	1304	1403	Powell	469	542	643	801	1122
Prairie	469	542	643	903	1019	Ravalli	559	563	758	1117	1121
Richland	469	542	643	824	1139	Roosevelt	469	475	643	801	859
Rosebud	469	475	643	801	859	Sanders	384	479	643	818	921
Sheridan	469	542	643	948	1139	Silver Bow	511	514	696	867	1019
Stillwater	433	475	643	907	1139	Sweet Grass	515	595	706	1040	1250
Teton	476	508	652	904	1034	Toole	469	542	643	948	1139

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 30

MONTANA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Treasure	538	568	737	1027	1168	Valley	469	542	643	890	894
Wheatland	538	568	737	1035	1168	Wibaux	469	496	643	903	1019

NEBRASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE HMFA	416	530	700	973	1215	Lancaster
Omaha-Council Bluffs, NE-IA HMFA	480	642	807	1082	1202	Cass, Douglas, Sarpy, Washington
Saunders County, NE HMFA	429	533	721	898	964	Saunders
Seward County, NE HMFA	361	473	607	841	1075	Seward
Sioux City, IA-NE-SD MSA	421	550	708	929	1045	Dakota, Dixon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	447	450	609	758	814	Antelope	409	512	607	788	811
Arthur	409	455	607	894	897	Banner	409	455	607	765	830
Blaine	424	471	629	783	860	Boone	409	512	607	756	811
Box Butte	409	466	607	796	844	Boyd	409	512	607	894	897
Brown	409	449	607	756	895	Buffalo	413	493	667	900	1150
Burt	409	449	607	834	837	Butler	409	449	607	801	1001
Cedar	409	449	607	756	1075	Chase	409	449	607	756	858
Cherry	409	449	607	756	830	Cheyenne	409	474	607	879	882
Clay	409	512	607	756	811	Colfax	417	522	619	771	860
Cuming	409	449	607	756	823	Custer	409	512	607	894	1075
Dawes	432	449	607	894	897	Dawson	409	449	607	756	811
Deuel	409	449	607	756	830	Dodge	394	502	662	870	885
Dundy	409	449	607	756	830	Fillmore	409	449	607	785	818
Franklin	409	455	607	892	1075	Frontier	409	449	607	756	811
Furnas	409	449	607	756	830	Gage	399	459	613	799	833
Garden	409	455	607	756	1005	Garfield	433	481	642	800	858
Gosper	414	454	614	765	839	Grant	409	455	607	756	830
Greeley	409	455	607	894	947	Hall	408	512	662	827	885
Hamilton	409	449	607	772	921	Harlan	409	449	607	756	811
Hayes	434	482	644	802	861	Hitchcock	409	455	607	756	854
Holt	409	512	607	756	841	Hooker	409	455	607	778	830
Howard	409	449	607	769	811	Jefferson	409	460	607	756	991
Johnson	430	472	638	795	853	Kearney	420	525	623	844	847
Keith	409	512	607	823	1005	Keya Paha	409	455	607	756	830
Kimball	435	477	646	805	863	Knox	409	512	607	894	1075
Lincoln	388	483	653	813	931	Logan	409	455	607	756	830
Loup	409	455	607	756	830	McPherson	409	455	607	756	830
Madison	429	477	637	822	1021	Merrick	409	449	607	894	897
Morrill	409	449	607	769	893	Nance	409	512	607	756	822
Nemaha	409	481	607	756	1075	Nuckolls	409	512	607	894	897

NEBRASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Otoe	409	463	607	894	1075	Pawnee	409	449	607	756	811
Perkins	409	455	607	756	952	Phelps	409	512	607	756	1075
Pierce	409	512	607	756	1071	Platte	490	512	607	756	926
Polk	409	449	607	756	811	Red Willow	409	479	607	756	957
Richardson	409	503	607	756	811	Rock	409	455	607	772	830
Saline	457	501	678	844	906	Scotts Bluff	459	488	650	810	953
Sheridan	409	512	607	820	823	Sherman	409	449	607	756	960
Sioux	409	512	607	817	830	Stanton	409	449	607	894	978
Thayer	409	449	607	756	811	Thomas	409	455	607	756	830
Thurston	409	449	607	756	811	Valley	409	449	607	756	830
Wayne	409	449	607	844	847	Webster	409	512	607	894	1075
Wheeler	409	455	607	894	897	York	409	458	607	756	811

NEVADA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Carson City, NV MSA	545	684	870	1240	1510	Carson
Las Vegas-Paradise, NV MSA	630	787	969	1428	1695	Clark
Reno-Sparks, NV MSA	551	699	924	1362	1637	Storey, Washoe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Churchill	504	656	846	1054	1498	Douglas	566	762	942	1388	1668
Elko	505	628	849	1085	1382	Esmeralda	383	475	643	903	1032
Eureka	484	600	812	1011	1303	Humboldt	439	544	736	1052	1181
Lander	420	594	704	918	1130	Lincoln	383	475	643	836	875
Lyon	473	663	786	1158	1392	Mineral	383	542	643	801	1032
Nye	458	568	769	1032	1043	Pershing	383	542	643	948	1032
White Pine	452	639	758	1095	1099						

NEW HAMPSHIRE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston-Cambridge-Quincy, MA-NH HMFA	1071	1196	1494	1861	2023	Rockingham County towns of Seabrook town, South Hampton town
Hillsborough County, NH (part) HMFA	724	767	924	1154	1322	Hillsborough County towns of Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town
Lawrence, MA-NH HMFA	798	910	1168	1455	1561	Rockingham County towns of Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town
Manchester, NH HMFA	639	846	1074	1338	1515	Hillsborough County towns of Bedford town, Goffstown town, Manchester city, Weare town

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 32

NEW HAMPSHIRE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Nashua, NH HMFA	782	888	1159	1558	1809	Hillsborough County towns of Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Pelham town, Wilton town
Portsmouth-Rochester, NH HMFA	718	837	1064	1458	1521	Rockingham County towns of Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town Strafford County towns of Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Middleton town, Milton town, New Durham town, Rochester city, Rollinsford town, Somersworth city, Strafford town
Western Rockingham County, NH HMFA	937	950	1285	1764	1770	Rockingham County towns of Auburn town, Candia town, Deerfield town, Londonderry town, Northwood town, Nottingham town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Belknap County, NH	729	734	993	1413	1418	Alton town, Barnstead town, Belmont town, Center Harbor town, Gilford town, Gilmanton town, Laconia city, Meredith town, New Hampton town, Sanbornton town, Tilton town
Carroll County, NH	707	786	1019	1418	1424	Albany town, Bartlett town, Brookfield town, Chatham town, Conway town, Eaton town, Effingham town, Freedom town, Hale's location, Hart's Location town, Jackson town, Madison town, Moultonborough town, Ossipee town, Sandwich town, Tamworth town, Tuftonboro town, Wakefield town, Wolfeboro town
Cheshire County, NH	662	794	1048	1305	1707	Alstead town, Chesterfield town, Dublin town, Fitzwilliam town, Gilsum town, Harrisville town, Hinsdale town, Jaffrey town, Keene city, Marlborough town, Marlow town, Nelson town, Richmond town, Rindge town, Roxbury town, Stoddard town, Sullivan town, Surry town, Swanzey town, Troy town, Walpole town, Westmoreland town, Winchester town
Coos County, NH	573	598	709	946	1134	Atkinson and Gilmanton Academy grant, Beans grant, Beans purchase, Berlin city, Cambridge township, Carroll town, Chandlers purchase, Clarksville town, Colebrook town, Columbia town, Crawfords purchase, Cutts grant, Dalton town, Dixs grant, Dixville township, Dummer town, Errol town, Ervings location, Gorham town, Greens grant, Hadleys purchase, Jefferson town, Kilkenny township, Lancaster town, Low and Burbanks grant, Martins location, Milan town, Millsfield township, Northumberland town, Odell township, Pinkhams grant, Pittsburg town, Randolph town, Sargents purchase, Second College grant, Shelburne town, Stark town, Stewartstown town, Stratford town, Success township,

NEW HAMPSHIRE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Grafton County, NH	943	965	1213	1523	1693	Thompson and Meserves purchase, Wentworth location, Whitefield town Alexandria town, Ashland town, Bath town, Benton town, Bethlehem town, Bridgewater town, Bristol town, Campton town, Canaan town, Dorchester town, Easton town, Ellsworth town, Enfield town, Franconia town, Grafton town, Groton town, Hanover town, Haverhill town, Hebron town, Holderness town, Landaff town, Lebanon city, Lincoln town, Lisbon town, Littleton town, Livermore town, Lyman town, Lyme town, Monroe town, Orange town, Orford town, Piermont town, Plymouth town, Rumney town, Sugar Hill town, Thornton town, Warren town, Waterville Valley town, Wentworth town, Woodstock town
Merrimack County, NH	639	801	1001	1320	1575	Allenstown town, Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hooksett town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Sullivan County, NH	718	819	998	1352	1375	Acworth town, Charlestown town, Claremont city, Cornish town, Croydon town, Goshen town, Grantham town, Langdon town, Lempster town, Newport town, Plainfield town, Springfield town, Sunapee town, Unity town, Washington town

NEW JERSEY

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlantic City-Hammonton, NJ MSA	817	947	1176	1626	1890	Atlantic
Bergen-Passaic, NJ HMFA	1070	1156	1371	1776	2014	Bergen, Passaic
Jersey City, NJ HMFA	1009	1109	1315	1673	1847	Hudson
Middlesex-Somerset-Hunterdon, NJ HMFA	952	1214	1495	1940	2545	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ HMFA	936	1106	1373	1903	2239	Monmouth, Ocean
Newark, NJ HMFA	1025	1063	1269	1637	1871	Essex, Morris, Sussex, Union
Ocean City, NJ MSA	668	833	1122	1588	1671	Cape May
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	814	959	1156	1440	1546	Burlington, Camden, Gloucester, Salem
Trenton-Ewing, NJ MSA	932	1053	1269	1659	1919	Mercer
Vineland-Millville-Bridgeton, NJ MSA	784	905	1115	1432	1795	Cumberland
Warren County, NJ HMFA	687	921	1124	1469	1638	Warren

NEW MEXICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Albuquerque, NM MSA	543	682	836	1210	1481	Bernalillo, Sandoval, Torrance, Valencia
Farmington, NM MSA	499	536	725	903	969	San Juan
Las Cruces, NM MSA	445	534	634	907	1008	Dona Ana

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 34

NEW MEXICO continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Santa Fe, NM MSA	739	804	953	1278	1366	Santa Fe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Catron	473	532	631	930	947	Chaves	425	466	631	891	1101
Cibola	479	482	631	871	1118	Colfax	474	477	645	803	862
Curry	466	469	631	922	1118	De Baca	473	532	631	930	947
Eddy	534	548	728	935	973	Grant	473	532	631	930	1015
Guadalupe	473	491	631	930	947	Harding	473	491	631	836	947
Hidalgo	473	491	631	930	947	Lea	525	528	715	909	962
Lincoln	488	606	820	1021	1096	Los Alamos	603	776	1006	1315	1704
Luna	473	531	631	910	913	McKinley	577	632	749	933	1001
Mora	473	532	631	831	947	Otero	389	532	631	921	1118
Quay	463	466	631	811	843	Rio Arriba	375	466	631	786	843
Roosevelt	400	521	672	837	1190	San Miguel	380	524	638	843	873
Sierra	429	466	631	786	947	Socorro	444	466	631	786	1118
Taos	563	677	810	1009	1082	Union	463	466	631	914	947

NEW YORK

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	690	782	968	1206	1294	Albany, Rensselaer, Saratoga, Schenectady, Schoharie
Binghamton, NY MSA	549	581	742	1058	1199	Broome, Tioga
Buffalo-Niagara Falls, NY MSA	581	617	768	982	1111	Erie, Niagara
Elmira, NY MSA	481	578	758	971	1088	Chemung
Glens Falls, NY MSA	555	710	863	1159	1324	Warren, Washington
Ithaca, NY MSA	780	957	1146	1588	1593	Tompkins
Kingston, NY MSA	689	856	1110	1455	1686	Ulster
Nassau-Suffolk, NY HMFA	1100	1395	1718	2234	2572	Nassau, Suffolk
New York, NY HMFA	1196	1249	1481	1904	2134	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
Poughkeepsie-Newburgh-Middletown, NY MSA	837	966	1188	1488	1588	Dutchess, Orange
Rochester, NY MSA	585	712	867	1093	1168	Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	555	619	792	1039	1140	Madison, Onondaga, Oswego
Utica-Rome, NY MSA	551	561	714	946	1062	Herkimer, Oneida
Westchester County, NY Statutory Exception Area	1062	1292	1591	2035	2363	Westchester

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allegany	528	531	663	867	975	Cattaraugus	517	567	715	949	1016
Cayuga	554	589	749	982	1172	Chautauqua	516	519	677	961	986
Chenango	520	523	656	930	960	Clinton	589	662	845	1134	1223
Columbia	738	743	923	1196	1535	Cortland	594	603	751	970	1004
Delaware	566	569	718	900	1032	Essex	553	650	834	1039	1287
Franklin	561	565	727	1045	1156	Fulton	558	562	722	954	1093
Genesee	458	593	744	954	1053	Greene	669	757	897	1200	1326
Hamilton	514	569	675	841	971	Jefferson	702	808	1050	1335	1507

NEW YORK continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Lewis	539	583	708	1043	1094	Montgomery	601	605	763	950	1077
Otsego	624	676	839	1127	1198	St. Lawrence	539	612	777	1043	1129
Schuyler	516	564	678	978	1158	Seneca	486	601	712	1016	1020
Steuben	481	568	696	900	1014	Sullivan	686	690	856	1113	1516
Wyoming	456	513	694	905	927	Yates	555	561	730	996	1293

NORTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anson County, NC HMFA	484	533	632	925	1119	Anson
Asheville, NC HMFA	510	723	857	1100	1426	Buncombe, Henderson, Madison
Burlington, NC MSA	548	551	695	903	929	Alamance
Charlotte-Gastonia-Rock Hill, NC-SC HMFA	636	701	831	1120	1389	Cabarrus, Gaston, Mecklenburg, Union
Durham-Chapel Hill, NC HMFA	597	737	874	1127	1320	Chatham, Durham, Orange
Fayetteville, NC HMFA	601	605	774	1035	1303	Cumberland
Goldsboro, NC MSA	452	471	637	830	1015	Wayne
Greene County, NC HMFA	464	467	632	793	845	Greene
Greensboro-High Point, NC HMFA	518	594	704	957	1080	Guilford, Randolph
Greenville, NC HMFA	530	533	689	934	1220	Pitt
Haywood County, NC HMFA	625	629	811	1125	1436	Haywood
Hickory-Lenoir-Morganton, NC MSA	511	533	632	827	1028	Alexander, Burke, Caldwell, Catawba
Hoke County, NC HMFA	491	494	632	879	1090	Hoke
Jacksonville, NC MSA	624	629	773	1087	1369	Onslow
Pender County, NC HMFA	493	497	672	990	1120	Pender
Person County, NC HMFA	453	490	663	826	950	Person
Raleigh-Cary, NC MSA	663	774	918	1189	1477	Franklin, Johnston, Wake
Rockingham County, NC HMFA	497	500	632	787	845	Rockingham
Rocky Mount, NC MSA	530	533	659	899	948	Edgecombe, Nash
*Virginia Beach-Norfolk-Newport News, VA-NC MSA	894	920	1107	1530	1926	Currituck
Wilmington, NC HMFA	639	685	847	1117	1274	Brunswick, New Hanover
Winston-Salem, NC MSA	540	561	687	991	1046	Davie, Forsyth, Stokes, Yadkin

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	511	533	632	905	908	Ashe	441	482	632	787	845
Avery	520	524	709	1045	1048	Beaufort	489	492	632	931	1050
Bertie	464	467	632	837	845	Bladen	464	467	632	787	845
Camden	643	647	808	1006	1216	Carteret	662	691	819	1171	1451
Caswell	464	467	632	904	979	Cherokee	464	467	632	835	1073
Chowan	511	533	632	838	1119	Clay	511	533	632	931	1119
Cleveland	498	501	632	877	917	Columbus	511	516	632	787	845
Craven	453	562	761	987	1328	Dare	622	653	883	1239	1480
Davidson	474	502	632	880	996	Duplin	499	502	632	787	923
Gates	503	506	632	840	1111	Graham	464	467	632	931	1119
Granville	550	572	681	848	925	Halifax	470	534	645	841	1138
Harnett	512	515	697	927	1137	Hertford	511	533	632	787	1119

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 36

NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hyde	620	623	779	970	1041	Iredell	583	609	722	937	1276
Jackson	508	511	654	848	1065	Jones	511	533	632	828	845
Lee	568	593	703	876	939	Lenoir	383	493	644	802	881
Lincoln	511	533	632	861	864	McDowell	464	467	632	789	1034
Macon	532	535	724	902	968	Martin	511	533	632	787	845
Mitchell	464	467	632	813	951	Montgomery	496	499	632	829	949
Moore	638	657	790	1158	1393	Northampton	470	473	632	843	1084
Pamlico	464	467	632	902	1106	Pasquotank	618	622	782	1051	1233
Perquimans	545	569	675	995	1196	Polk	547	551	728	907	1210
Richmond	511	533	632	837	845	Robeson	482	485	632	802	973
Rowan	521	524	678	903	1041	Rutherford	511	533	632	896	1052
Sampson	376	509	632	853	981	Scotland	487	490	663	848	886
Stanly	376	480	632	873	1103	Surry	511	533	632	931	1119
Swain	474	477	646	805	974	Transylvania	495	498	652	868	872
Tyrrell	511	533	632	809	951	Vance	391	486	657	818	958
Warren	392	480	632	931	1119	Washington	655	659	824	1181	1391
Watauga	502	656	844	1183	1377	Wilkes	474	533	632	787	1055
Wilson	457	528	715	951	956	Yancey	474	477	632	795	845

NORTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bismarck, ND MSA	535	607	759	1076	1269	Burleigh, Morton
Fargo, ND-MN MSA	456	553	715	1054	1246	Cass
Grand Forks, ND-MN MSA	441	537	719	973	1173	Grand Forks

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	477	480	600	884	887	Barnes	499	502	636	792	850
Benson	485	506	600	884	887	Billings	487	490	612	762	830
Bottineau	440	443	600	747	802	Bowman	521	544	645	950	954
Burke	462	465	600	776	802	Cavalier	440	443	600	836	995
Dickey	485	506	600	801	814	Divide	477	480	600	836	839
Dunn	462	465	600	884	887	Eddy	485	506	600	884	887
Emmons	485	506	600	884	1001	Foster	466	469	600	883	1063
Golden Valley	485	506	600	836	839	Grant	440	443	600	836	839
Griggs	485	506	600	884	1063	Hettinger	485	506	600	884	887
Kidder	447	450	600	867	870	LaMoure	440	443	600	884	887
Logan	477	480	600	836	839	McHenry	468	471	600	787	934
McIntosh	440	443	600	747	803	McKenzie	479	483	653	962	966
McLean	480	483	600	818	861	Mercer	485	506	600	884	887
Mountrail	883	922	1093	1361	1907	Nelson	485	506	600	836	839
Oliver	477	480	600	836	839	Pembina	485	506	600	747	802

NORTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pierce	485	506	600	884	887
Ransom	482	485	651	959	963
Richland	441	444	600	879	949
Sargent	440	443	600	865	945
Sioux	477	480	600	827	830
Stark	599	625	741	1028	1032
Stutsman	462	465	612	762	1004
Traill	440	443	600	765	803
Ward	812	866	1142	1683	1752
Williams	811	884	1078	1343	1441
Ramsey	468	471	600	823	826
Renville	440	443	600	884	887
Rolette	485	506	600	884	966
Sheridan	485	494	600	836	839
Slope	487	490	612	853	856
Steele	482	485	600	795	814
Towner	440	443	600	836	981
Walsh	485	506	600	811	908
Wells	485	506	600	884	951

OHIO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Akron, OH MSA	494	574	776	999	1037	Portage, Summit
Brown County, OH HMFA	378	489	635	900	962	Brown
Canton-Massillon, OH MSA	414	519	675	887	952	Carroll, Stark
Cincinnati-Middleton, OH-KY-IN HMFA	463	579	769	1065	1173	Butler, Clermont, Hamilton, Warren
Cleveland-Elyria-Mentor, OH MSA	502	603	764	1023	1057	Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH HMFA	501	624	811	1046	1209	Delaware, Fairfield, Franklin, Licking, Madison, Morrow, Pickaway
Dayton, OH HMFA	493	554	726	972	1089	Greene, Miami, Montgomery
Huntington-Ashland, WV-KY-OH MSA	380	519	638	843	1035	Lawrence
Lima, OH MSA	471	474	635	791	861	Allen
Mansfield, OH MSA	474	477	634	931	934	Richland
Parkersburg-Marietta-Vienna, WV-OH MSA	456	491	642	862	948	Washington
Preble County, OH HMFA	389	483	654	871	875	Preble
Sandusky, OH MSA	426	580	716	933	957	Erie
Springfield, OH MSA	463	522	680	896	982	Clark
Steubenville-Weirton, OH-WV MSA	462	533	656	879	1007	Jefferson
Toledo, OH MSA	404	518	679	916	968	Fulton, Lucas, Ottawa, Wood
Union County, OH HMFA	482	584	780	971	1042	Union
Wheeling, WV-OH MSA	481	509	634	814	847	Belmont
Youngstown-Warren-Boardman, OH HMFA	469	531	657	866	915	Mahoning, Trumbull

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	431	501	634	803	847
Ashtabula	426	496	646	874	879
Auglaize	393	480	649	891	1066
Clinton	448	489	662	865	1032
Coshocton	431	496	634	874	895
Darke	464	522	634	916	1029
Fayette	519	523	707	881	1044
Guernsey	377	496	634	792	884
Hardin	415	495	634	876	1056
Henry	442	537	651	945	1153
Ashland	394	521	663	938	981
Athens	571	596	707	890	945
Champaign	413	519	634	934	1008
Columbiana	411	500	645	854	935
Crawford	390	469	634	894	898
Defiance	488	491	634	835	1079
Gallia	431	510	634	836	944
Hancock	403	515	660	964	996
Harrison	377	527	634	902	905
Highland	387	482	634	790	847

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 38

OHIO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hocking	431	496	634	842	847	Holmes	431	491	634	798	847
Huron	377	479	634	890	1004	Jackson	512	530	634	837	847
Knox	502	506	634	884	950	Logan	495	498	674	894	1032
Marion	486	552	708	938	1039	Meigs	431	478	634	824	962
Mercer	454	494	669	926	929	Monroe	431	535	634	790	847
Morgan	470	516	634	934	937	Muskingum	377	517	634	909	999
Noble	493	497	634	873	930	Paulding	431	502	634	810	847
Perry	431	469	634	831	887	Pike	512	535	634	934	1102
Putnam	439	490	647	806	865	Ross	476	520	703	887	1139
Sandusky	431	521	634	837	1123	Scioto	433	535	634	790	932
Seneca	488	492	634	883	891	Shelby	422	500	677	843	905
Tuscarawas	383	488	643	802	859	Van Wert	466	476	634	828	874
Vinton	431	535	634	899	998	Wayne	424	530	674	870	901
Williams	472	475	634	790	926	Wyandot	451	535	634	915	1093

OKLAHOMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fort Smith, AR-OK HMFA	484	487	638	850	958	Sequoyah
Grady County, OK HMFA	419	460	623	838	842	Grady
Lawton, OK MSA	519	531	718	994	1174	Comanche
Le Flore County, OK HMFA	491	494	623	818	1015	Le Flore
Lincoln County, OK HMFA	427	502	623	848	851	Lincoln
Oklahoma City, OK HMFA	503	584	748	1024	1229	Canadian, Cleveland, Logan, McClain, Oklahoma
Okmulgee County, OK HMFA	372	528	626	780	837	Okmulgee
Pawnee County, OK HMFA	393	525	623	781	1030	Pawnee
Tulsa, OK HMFA	494	601	783	1062	1183	Creek, Osage, Rogers, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	439	460	623	783	833	Alfalfa	439	460	623	780	963
Atoka	439	460	623	776	833	Beaver	460	500	653	836	984
Beckham	529	533	721	898	1087	Blaine	439	460	623	918	921
Bryan	497	500	638	883	959	Caddo	461	489	623	776	1103
Carter	390	463	626	780	872	Cherokee	371	517	623	776	1032
Choctaw	439	468	623	918	1071	Cimarron	439	525	623	787	939
Coal	439	460	623	914	939	Cotton	439	460	623	776	833
Craig	439	525	623	827	892	Custer	503	515	623	918	921
Delaware	474	477	623	878	1103	Dewey	439	477	623	776	871
Ellis	439	525	623	776	939	Garfield	423	531	630	840	941
Garvin	393	460	623	776	868	Grant	439	525	623	776	833
Greer	456	533	648	807	977	Harmon	439	477	623	798	937
Harper	439	477	623	800	939	Haskell	439	460	623	860	863
Hughes	439	525	623	801	833	Jackson	446	475	623	905	1103
Jefferson	439	460	623	776	833	Johnston	439	460	623	776	833

OKLAHOMA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Kay	467	470	636	823	1015	Kingfisher	439	460	623	802	1073
Kiowa	458	461	623	886	939	Latimer	439	496	623	900	903
Love	439	525	623	867	870	McCurtain	439	460	623	848	1044
McIntosh	421	460	623	776	1103	Major	439	477	623	918	1103
Marshall	445	467	632	869	918	Mayes	371	460	623	857	1103
Murray	442	464	628	782	839	Muskogee	472	575	755	1056	1102
Noble	439	525	623	842	909	Nowata	455	518	646	805	974
Okfuskee	439	522	623	867	870	Ottawa	465	468	633	788	909
Payne	434	535	697	1015	1234	Pittsburg	403	515	677	843	905
Pontotoc	439	525	623	836	1067	Pottawatomie	474	477	646	817	865
Pushmataha	439	460	623	820	918	Roger Mills	439	477	623	828	833
Seminole	412	494	623	916	950	Stephens	439	460	623	872	1103
Texas	441	528	626	780	1109	Tillman	439	468	623	809	833
Washington	388	539	652	952	1136	Washita	439	525	623	918	1103
Woods	439	460	623	776	837	Woodward	511	534	633	933	1121

OREGON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bend, OR MSA	558	646	804	1149	1375	Deschutes
Corvallis, OR MSA	490	628	823	1213	1458	Benton
Eugene-Springfield, OR MSA	493	617	829	1193	1401	Lane
Medford, OR MSA	617	624	844	1244	1402	Jackson
Portland-Vancouver-Hillsboro, OR-WA MSA	682	793	944	1391	1672	Clackamas, Columbia, Multnomah, Washington, Yamhill
Salem, OR MSA	538	569	768	1132	1360	Marion, Polk

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baker	515	532	677	867	951	Clatsop	562	610	824	1174	1459
Coos	489	557	727	1029	1268	Crook	443	572	706	1040	1209
Curry	519	595	805	1184	1235	Douglas	498	588	775	1142	1373
Gilliam	422	498	655	945	1102	Grant	415	500	643	948	1139
Harney	415	475	643	801	859	Hood River	683	713	845	1245	1377
Jefferson	401	511	643	948	951	Josephine	462	589	776	1122	1226
Klamath	430	565	697	1005	1216	Lake	415	542	643	801	1139
Lincoln	615	657	821	1210	1214	Linn	511	592	801	1166	1279
Malheur	443	494	643	906	967	Morrow	415	475	643	821	996
Sherman	474	620	735	966	1237	Tillamook	490	618	773	1070	1364
Umatilla	441	555	741	974	1312	Union	402	499	675	923	1165
Wallowa	450	559	698	869	984	Wasco	557	614	776	1136	1261
Wheeler	415	475	643	801	1082						

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 40

PENNSYLVANIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA HMFA	670	769	972	1216	1379	Carbon, Lehigh, Northampton
Altoona, PA MSA	515	549	657	865	965	Blair
Armstrong County, PA HMFA	383	475	643	812	885	Armstrong
Erie, PA MSA	438	534	673	841	1004	Erie
Harrisburg-Carlisle, PA MSA	608	678	866	1117	1157	Cumberland, Dauphin, Perry
Johnstown, PA MSA	463	542	643	853	859	Cambria
Lancaster, PA MSA	580	661	845	1089	1129	Lancaster
Lebanon, PA MSA	483	631	812	1044	1152	Lebanon
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	814	959	1156	1440	1546	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pike County, PA HMFA	892	898	1141	1435	1817	Pike
Pittsburgh, PA HMFA	549	630	786	987	1050	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland
Reading, PA MSA	529	656	868	1081	1160	Berks
Scranton--Wilkes-Barre, PA MSA	496	590	735	933	1048	Lackawanna, Luzerne, Wyoming
Sharon, PA HMFA	487	525	676	853	903	Mercer
State College, PA MSA	660	723	889	1165	1208	Centre
Williamsport, PA MSA	603	681	862	1141	1168	Lycoming
York-Hanover, PA MSA	492	624	827	1069	1141	York

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	609	613	792	1052	1150	Bedford	519	535	643	832	859
Bradford	480	486	643	862	866	Cameron	467	542	643	930	1139
Clarion	467	542	643	803	1021	Clearfield	454	500	643	861	864
Clinton	518	522	706	917	1146	Columbia	519	522	663	853	1150
Crawford	467	520	643	851	932	Elk	467	519	643	801	859
Forest	536	560	664	978	1176	Franklin	580	674	867	1153	1447
Fulton	467	542	643	804	859	Greene	467	526	643	801	859
Huntingdon	515	536	643	917	920	Indiana	540	563	668	899	902
Jefferson	385	528	643	801	884	Juniata	417	532	643	913	916
Lawrence	390	526	656	853	877	McKean	464	515	643	814	859
Mifflin	498	501	643	808	859	Monroe	614	728	952	1322	1451
Montour	544	631	748	990	1000	Northumberland	527	537	652	854	972
Potter	467	542	643	835	1001	Schuylkill	383	494	643	882	888
Snyder	529	552	655	845	875	Somerset	450	529	643	801	906
Sullivan	515	518	643	888	891	Susquehanna	538	562	666	872	1018
Tioga	384	542	643	801	978	Union	506	522	696	954	1094
Venango	477	480	643	801	859	Warren	519	534	643	808	943
Wayne	432	591	701	1033	1036						

RHODE ISLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Newport-Middleton-Portsmouth, RI HMFA	948	954	1185	1746	2099	Newport County towns of Middletown town, Newport city, Portsmouth town
Providence-Fall River, RI-MA HMFA	686	773	944	1176	1407	Bristol County towns of Barrington town, Bristol town, Warren town

RHODE ISLAND continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Westerly-Hopkinton-New Shoreham, RI HMFA	582	724	979	1231	1541	Kent County towns of Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town Newport County towns of Jamestown town, Little Compton town, Tiverton town Providence County towns of Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city Washington County towns of Charlestown town, Exeter town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town Washington County towns of Hopkinton town, New Shoreham town, Westerly town

SOUTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anderson, SC MSA	521	529	645	883	913	Anderson
Augusta-Richmond County, GA-SC MSA	541	610	728	990	1226	Aiken, Edgefield
Charleston-North Charleston-Summerville, SC MSA	759	791	940	1217	1615	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC HMFA	636	701	831	1120	1389	York
Columbia, SC HMFA	605	656	778	1026	1301	Calhoun, Fairfield, Lexington, Richland, Saluda
Darlington County, SC HMFA	484	506	608	757	917	Darlington
Florence, SC HMFA	497	502	624	777	834	Florence
Greenville-Mauldin-Easley, SC MSA	485	611	725	962	1139	Greenville, Pickens
Kershaw County, SC HMFA	487	527	626	837	1063	Kershaw
Laurens County, SC HMFA	575	760	966	1244	1387	Laurens
Myrtle Beach-North Myrtle Beach-Conway, SC MSA	640	644	801	998	1171	Horry
Spartanburg, SC MSA	426	568	674	900	1012	Spartanburg
Sumter, SC MSA	505	508	652	812	1007	Sumter

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Abbeville	452	455	608	825	1077	Allendale	489	492	613	763	1086
Bamberg	446	449	608	757	1077	Barnwell	446	449	608	857	860
Beaufort	653	793	940	1192	1440	Cherokee	491	513	608	822	1077
Chester	491	513	608	793	932	Chesterfield	491	513	608	802	1001
Clarendon	446	449	608	757	1021	Colleton	529	532	671	859	897
Dillon	446	449	608	868	871	Georgetown	522	526	711	943	1188
Greenwood	515	519	674	889	930	Hampton	446	449	608	765	813
Jasper	436	503	680	909	993	Lancaster	479	482	608	837	896
Lee	491	513	608	896	1077	McCormick	476	479	610	899	902
Marion	491	513	608	765	895	Marlboro	446	449	608	757	820
Newberry	454	458	619	797	1077	Oconee	478	481	608	757	950
Orangeburg	380	497	627	781	1060	Union	446	449	608	803	813

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 42

SOUTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Williamsburg	362	513	608	781	848

SOUTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Meade County, SD HMFA	432	551	682	961	965	Meade
Rapid City, SD HMFA	503	594	794	1072	1406	Pennington
Sioux City, IA-NE-SD MSA	421	550	708	929	1045	Union
Sioux Falls, SD MSA	481	565	711	1000	1177	Lincoln, McCook, Minnehaha, Turner

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aurora	511	517	700	956	960	Beadle	468	473	640	859	863
Bennett	468	540	640	943	1047	Bon Homme	468	516	640	898	979
Brookings	450	523	708	1043	1254	Brown	438	497	672	855	1190
Brule	468	540	640	883	886	Buffalo	563	570	771	960	1030
Butte	468	523	640	943	946	Campbell	468	500	640	883	886
Charles Mix	468	540	640	830	855	Clark	468	473	640	797	855
Clay	522	556	715	1054	1266	Codington	439	532	691	891	923
Corson	468	474	640	911	914	Custer	541	547	740	922	1226
Davison	466	500	677	891	905	Day	468	473	640	943	946
Deuel	468	540	640	925	929	Dewey	468	473	640	890	902
Douglas	609	616	834	1039	1115	Edmunds	481	487	659	971	974
Fall River	548	554	750	1029	1032	Faulk	468	540	640	883	886
Grant	468	503	640	886	1099	Gregory	468	540	640	943	946
Haakon	508	515	695	1024	1028	Hamlin	509	512	642	946	949
Hand	468	486	640	933	936	Hanson	480	486	657	818	878
Harding	468	474	640	883	886	Hughes	489	494	669	986	1185
Hutchinson	468	534	640	855	1134	Hyde	468	474	640	943	946
Jackson	468	540	640	943	946	Jerauld	468	502	640	943	946
Jones	468	474	640	943	946	Kingsbury	468	493	640	943	1028
Lake	468	540	640	943	946	Lawrence	456	531	669	953	957
Lyman	468	517	640	943	1134	McPherson	468	473	640	883	886
Marshall	476	481	651	959	963	Mellette	468	474	640	943	946
Miner	468	540	640	883	886	Moody	468	473	640	941	944
Perkins	468	473	640	797	855	Potter	468	540	640	797	855
Roberts	468	536	640	893	897	Sanborn	468	540	640	943	1031
Shannon	468	521	640	851	880	Spink	517	540	640	943	946
Stanley	522	529	715	1054	1103	Sully	468	474	640	797	855
Todd	468	474	640	797	855	Tripp	468	473	640	867	870
Walworth	468	540	640	943	946	Yankton	457	473	640	893	1067
Ziebach	468	498	640	935	1062						

TENNESSEE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	476	574	714	971	1094	Hamilton, Marion, Sequatchie
Clarksville, TN-KY HMFA	525	599	781	1035	1122	Montgomery
Cleveland, TN MSA	470	505	683	879	1132	Bradley, Polk
Hickman County, TN HMFA	465	475	642	946	1112	Hickman
Jackson, TN MSA	403	531	678	904	987	Chester, Madison
Johnson City, TN MSA	489	580	729	997	1250	Carter, Unicoi, Washington
Kingsport-Bristol-Bristol, TN-VA MSA	461	511	658	861	974	Hawkins, Sullivan
Knoxville, TN MSA	492	628	774	1034	1162	Anderson, Blount, Knox, Loudon, Union
Macon County, TN HMFA	421	429	581	724	776	Macon
Memphis, TN-MS-AR HMFA	614	702	832	1137	1267	Fayette, Shelby, Tipton
Morristown, TN MSA	408	451	593	795	929	Grainger, Hamblen, Jefferson
Nashville-Davidson--Murfreesboro--Franklin, TN MSA	616	710	850	1130	1213	Cannon, Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Trousdale, Williamson, Wilson
Smith County, TN HMFA	412	432	581	788	810	Smith
Stewart County, TN HMFA	391	447	581	798	835	Stewart

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bedford	423	525	622	877	1038	Benton	395	429	581	856	1029
Bledsoe	395	444	581	724	821	Campbell	395	466	581	762	1029
Carroll	395	429	581	724	888	Claiborne	359	485	581	724	1029
Clay	395	429	581	856	861	Cocke	395	477	581	840	843
Coffee	397	479	635	871	928	Crockett	415	515	611	772	940
Cumberland	407	501	599	750	801	Decatur	395	490	581	757	969
DeKalb	395	429	581	848	851	Dyer	440	443	599	808	811
Fentress	395	429	581	740	811	Franklin	398	432	585	782	785
Gibson	465	468	581	795	798	Giles	396	492	583	836	839
Greene	395	485	581	772	783	Grundy	395	447	581	856	859
Hancock	395	437	581	797	1029	Hardeman	395	490	581	731	953
Hardin	395	429	581	727	1029	Haywood	364	515	611	761	817
Henderson	425	462	625	778	835	Henry	404	502	595	741	1054
Houston	346	429	581	733	776	Humphreys	395	490	581	761	776
Jackson	395	429	581	856	859	Johnson	395	429	581	724	776
Lake	454	457	581	856	935	Lauderdale	395	429	581	824	1019
Lawrence	395	448	581	724	802	Lewis	395	490	581	856	1029
Lincoln	395	444	581	724	977	McMinn	362	507	609	802	917
McNairy	369	429	581	724	782	Marshall	449	489	661	842	894
Maury	561	565	750	1007	1151	Meigs	395	444	581	856	859
Monroe	401	448	590	790	834	Moore	395	444	581	779	821
Morgan	395	458	581	724	891	Obion	379	429	581	725	776
Overton	411	449	604	890	1070	Perry	395	490	581	724	821
Pickett	395	444	581	724	821	Putnam	404	456	595	851	934
Rhea	469	474	581	777	800	Roane	426	463	627	855	859
Scott	411	490	581	817	1029	Sevier	470	517	691	861	1109
Van Buren	395	444	581	724	821	Warren	395	429	581	838	1029

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 44

TENNESSEE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Wayne	395	429	581	847	1029
White	406	442	598	777	799
Weakley	434	459	581	811	815

TEXAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Abilene, TX MSA	567	651	877	1111	1416	Callahan, Jones, Taylor
Amarillo, TX MSA	480	567	745	1017	1064	Armstrong, Carson, Potter, Randall
Aransas County, TX HMFA	457	545	737	1086	1148	Aransas
Atascosa County, TX HMFA	417	535	701	938	1067	Atascosa
Austin County, TX HMFA	497	563	739	1089	1247	Austin
Austin-Round Rock-San Marcos, TX MSA	681	834	1050	1421	1723	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	487	610	757	992	1012	Hardin, Jefferson, Orange
Brazoria County, TX HMFA	646	650	835	1151	1420	Brazoria
Brownsville-Harlingen, TX MSA	446	526	656	859	955	Cameron
Calhoun County, TX HMFA	525	528	714	892	1121	Calhoun
College Station-Bryan, TX MSA	647	651	803	1161	1392	Brazos, Burleson, Robertson
Corpus Christi, TX HMFA	583	699	896	1187	1396	Nueces, San Patricio
Dallas, TX HMFA	607	728	921	1229	1484	Collin, Dallas, Delta, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	588	643	794	1125	1350	El Paso
Fort Worth-Arlington, TX HMFA	590	690	893	1198	1426	Johnson, Parker, Tarrant
Houston-Baytown-Sugar Land, TX HMFA	599	721	890	1215	1502	Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, Waller
Kendall County, TX HMFA	591	789	936	1379	1658	Kendall
Killeen-Temple-Fort Hood, TX HMFA	564	579	771	1136	1289	Bell, Coryell
Lampasas County, TX HMFA	474	547	648	955	1067	Lampasas
Laredo, TX MSA	573	618	777	1021	1057	Webb
Longview, TX HMFA	560	565	693	863	1109	Gregg, Upshur
Lubbock, TX MSA	494	575	756	1103	1271	Crosby, Lubbock
McAllen-Edinburg-Mission, TX MSA	448	508	661	823	1005	Hidalgo
Medina County, TX HMFA	444	495	670	885	958	Medina
Midland, TX MSA	690	890	1160	1445	1603	Midland
Odessa, TX MSA	686	795	1023	1302	1367	Ector
Rusk County, TX HMFA	473	477	643	850	1028	Rusk
San Angelo, TX MSA	527	615	821	1139	1221	Irion, Tom Green
San Antonio-New Braunfels, TX HMFA	551	695	872	1137	1247	Bandera, Bexar, Comal, Guadalupe, Wilson
Sherman-Denison, TX MSA	510	639	827	1113	1417	Grayson
Texarkana, TX-Texarkana, AR MSA	479	622	764	952	1021	Bowie
Tyler, TX MSA	595	698	828	1099	1107	Smith
Victoria, TX HMFA	550	587	742	924	1184	Goliad, Victoria
Waco, TX MSA	482	566	766	1003	1122	McLennan
Wichita Falls, TX MSA	424	570	712	1009	1155	Archer, Clay, Wichita
Wise County, TX HMFA	499	619	838	1044	1120	Wise

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anderson	457	544	645	843	1142
Angelina	523	572	692	905	1019
Baylor	455	475	643	801	933
Andrews	542	593	766	1129	1133
Bailey	455	500	643	801	933
Bee	535	548	662	975	1073

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Blanco	526	549	743	925	993	Borden	461	506	651	811	944
Bosque	455	495	643	944	1063	Brewster	548	551	746	929	1082
Briscoe	455	500	643	857	933	Brooks	455	542	643	948	951
Brown	388	482	652	836	1155	Burnet	490	511	692	1020	1226
Camp	455	542	643	831	948	Cass	455	504	643	885	1139
Castro	455	542	643	801	927	Cherokee	455	535	643	836	898
Childress	455	542	643	801	933	Cochran	455	475	643	948	951
Coke	383	475	643	801	933	Coleman	455	475	643	948	1139
Collingsworth	470	516	664	978	982	Colorado	421	475	643	923	1138
Comanche	455	475	643	801	933	Concho	717	749	1013	1262	1469
Cooke	555	579	784	1024	1048	Cottle	455	523	643	948	951
Crane	455	500	643	801	933	Crockett	455	475	643	948	951
Culberson	455	500	643	920	933	Dallam	455	542	643	939	942
Dawson	455	536	643	948	951	Deaf Smith	455	475	643	896	899
DeWitt	472	475	643	801	933	Dickens	455	500	643	801	933
Dimmit	455	542	643	801	859	Donley	455	475	643	801	933
Duval	498	593	703	876	1020	Eastland	472	475	643	801	1131
Edwards	455	500	643	801	933	Erath	543	547	718	964	968
Falls	432	475	643	887	891	Fannin	386	480	649	892	1051
Fayette	455	475	643	812	859	Fisher	455	475	643	948	951
Floyd	455	542	643	948	1108	Foard	455	500	643	948	951
Franklin	455	475	643	948	1139	Freestone	410	509	689	858	999
Frio	455	542	643	948	1139	Gaines	455	475	643	904	962
Garza	455	542	643	948	951	Gillespie	602	628	850	1059	1505
Glasscock	461	506	651	811	944	Gonzales	472	475	643	948	954
Gray	455	501	643	806	1021	Grimes	457	516	646	861	937
Hale	469	505	643	875	1067	Hall	429	500	643	948	951
Hamilton	480	501	678	999	1002	Hansford	455	542	643	850	956
Hardeman	506	556	715	890	1037	Harrison	461	587	732	960	978
Hartley	464	484	655	909	950	Haskell	455	500	643	948	951
Hemphill	455	530	643	801	933	Henderson	542	548	671	879	1085
Hill	490	511	692	939	999	Hockley	491	514	694	864	927
Hood	625	630	852	1141	1207	Hopkins	501	504	682	875	1101
Houston	383	475	643	919	922	Howard	397	494	668	866	992
Hudspeth	455	500	643	948	951	Hutchinson	488	543	690	875	922
Jack	558	665	788	981	1396	Jackson	430	567	722	979	1279
Jasper	507	557	716	892	957	Jeff Davis	455	542	643	857	933
Jim Hogg	455	542	643	816	933	Jim Wells	508	550	717	893	958
Karnes	519	542	643	948	1139	Kenedy	455	500	643	857	933
Kent	455	500	643	801	933	Kerr	626	630	797	1126	1130
Kimble	455	475	643	801	859	King	461	506	651	811	944
Kinney	455	492	643	948	951	Kleberg	519	523	707	971	1252

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 46

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Knox	455	500	643	801	859	Lamar	455	542	643	937	1114
Lamb	455	542	643	859	1035	La Salle	457	477	646	952	955
Lavaca	408	475	643	923	933	Lee	455	542	643	948	951
Leon	455	488	643	836	1004	Limestone	535	568	755	1063	1072
Lipscomb	455	475	643	801	859	Live Oak	455	542	643	801	859
Llano	481	502	679	1001	1004	Loving	461	506	651	868	944
Lynn	455	542	643	948	951	McCulloch	455	475	643	935	938
McMullen	461	506	651	959	963	Madison	455	542	643	948	951
Marion	455	475	643	801	933	Martin	455	542	643	801	933
Mason	455	500	643	948	951	Matagorda	416	517	699	947	1238
Maverick	426	542	643	914	933	Menard	455	479	643	872	933
Milam	455	507	643	948	1139	Mills	455	501	643	948	1139
Mitchell	455	542	643	924	1139	Montague	455	475	643	905	909
Moore	533	536	661	823	1096	Morris	455	483	643	922	933
Motley	455	500	643	801	933	Nacogdoches	560	580	728	907	973
Navarro	546	550	721	904	968	Newton	455	533	643	801	859
Nolan	455	542	643	948	1139	Ochiltree	475	566	671	945	973
Oldham	479	570	676	996	1197	Palo Pinto	467	531	719	963	1010
Panola	455	475	643	821	1139	Parmer	455	542	643	843	1088
Pecos	462	531	643	850	1139	Polk	468	480	645	945	1087
Presidio	455	542	643	948	951	Rains	455	475	643	948	951
Reagan	455	522	643	802	933	Real	455	475	643	948	951
Red River	455	475	643	842	1139	Reeves	455	511	643	948	1139
Refugio	455	475	643	920	933	Roberts	461	506	651	811	944
Runnels	455	542	643	948	1139	Sabine	455	542	643	948	951
San Augustine	472	475	643	801	1111	San Saba	455	475	643	875	1139
Schleicher	455	475	643	801	933	Scurry	521	525	710	1046	1050
Shackelford	455	500	643	948	951	Shelby	455	475	643	801	933
Sherman	455	542	643	888	933	Somervell	455	542	643	948	1139
Starr	455	475	643	801	1025	Stephens	505	528	714	932	1036
Sterling	476	567	672	964	975	Stonewall	455	511	643	940	943
Sutton	455	524	643	823	933	Swisher	455	475	643	864	933
Terrell	466	555	658	877	955	Terry	455	491	643	823	933
Throckmorton	455	500	643	948	951	Titus	383	503	643	805	925
Trinity	455	536	643	948	1139	Tyler	455	498	643	948	951
Upton	455	542	643	872	933	Uvalde	492	542	643	883	933
Val Verde	474	483	654	948	951	Van Zandt	499	521	705	912	942
Walker	508	621	736	1000	1003	Ward	455	542	643	801	859
Washington	526	621	742	944	992	Wharton	400	497	673	889	899
Wheeler	468	558	661	950	959	Wilbarger	459	480	649	882	941
Willacy	455	475	643	853	1139	Winkler	455	475	643	948	951
Wood	482	485	656	882	1119	Yoakum	463	508	654	885	949

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Young	396	492	666	854	890
Zavala	455	542	643	948	951
Zapata	455	475	643	801	933

UTAH

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Logan, UT-ID MSA	487	490	649	934	1140	Cache
Ogden-Clearfield, UT MSA	485	594	778	1097	1317	Davis, Morgan, Weber
Provo-Orem, UT MSA	500	639	763	1103	1351	Juab, Utah
Salt Lake City, UT HMFA	606	727	901	1285	1513	Salt Lake
St. George, UT MSA	505	581	763	1047	1344	Washington
Summit County, UT HMFA	682	749	1014	1406	1411	Summit
Tooele County, UT HMFA	538	568	757	977	1241	Tooele

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaver	460	511	606	838	841
Carbon	461	464	608	757	861
Duchesne	558	620	735	1083	1302
Garfield	448	451	606	755	877
Iron	410	511	606	854	1073
Millard	460	511	606	893	1050
Rich	460	511	606	755	946
Sanpete	481	484	637	793	851
Uintah	631	635	859	1160	1344
Wayne	460	511	606	861	971
Box Elder	460	511	606	893	1073
Daggett	604	671	795	990	1241
Emery	460	511	606	755	910
Grand	575	638	757	1115	1119
Kane	525	584	692	1020	1023
Piute	603	670	794	989	1240
San Juan	460	511	606	818	821
Sevier	460	511	606	783	937
Wasatch	659	732	868	1279	1283

VERMONT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Burlington-South Burlington, VT MSA	936	1017	1328	1663	1953	Chittenden County towns of Bolton town, Buels gore, Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Huntington town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Underhill town, Westford town, Williston town, Winooski city Franklin County towns of Bakersfield town, Berkshire town, Enosburg town, Fairfax town, Fairfield town, Fletcher town, Franklin town, Georgia town, Highgate town, Montgomery town, Richford town, St. Albans city, St. Albans town, Sheldon town, Swanton town Grand Isle County towns of Alburgh town, Grand Isle town, Isle La Motte town, North Hero town, South Hero town

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 48

VERMONT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Addison County, VT	717	780	925	1283	1550	Addison town, Bridport town, Bristol town, Cornwall town, Ferrisburgh town, Goshen town, Granville town, Hancock town, Leicester town, Lincoln town, Middlebury town, Monkton town, New Haven town, Orwell town, Panton town, Ripton town, Salisbury town, Shoreham town, Starksboro town, Vergennes city, Waltham town, Weybridge town, Whiting town
Bennington County, VT	557	719	935	1140	1270	Arlington town, Bennington town, Dorset town, Glastenbury town, Landgrove town, Manchester town, Peru town, Pownal town, Readsboro town, Rupert town, Sandgate town, Searsburg town, Shaftsbury town, Stamford town, Sunderland town, Winhall town, Woodford town
Caledonia County, VT	642	679	805	1003	1226	Barnet town, Burke town, Danville town, Groton town, Hardwick town, Kirby town, Lyndon town, Newark town, Peacham town, Ryegate town, St. Johnsbury town, Sheffield town, Stannard town, Sutton town, Walden town, Waterford town, Wheelock town
Essex County, VT	547	603	715	890	1144	Averill town, Avery's gore, Bloomfield town, Brighton town, Brunswick town, Canaan town, Concord town, East Haven town, Ferdinand town, Granby town, Guildhall town, Lemington town, Lewis town, Lunenburg town, Maidstone town, Norton town, Victory town, Warner's grant, Warren's gore
Lamoille County, VT	641	775	966	1404	1700	Belvidere town, Cambridge town, Eden town, Elmore town, Hyde Park town, Johnson town, Morristown town, Stowe town, Waterville town, Wolcott town
Orange County, VT	532	747	894	1113	1583	Bradford town, Braintree town, Brookfield town, Chelsea town, Corinth town, Fairlee town, Newbury town, Orange town, Randolph town, Strafford town, Thetford town, Topsham town, Tunbridge town, Vershire town, Washington town, West Fairlee town, Williamstown town
Orleans County, VT	616	637	762	954	1033	Albany town, Barton town, Brownington town, Charleston town, Coventry town, Craftsbury town, Derby town, Glover town, Greensboro town, Holland town, Irasburg town, Jay town, Lowell town, Morgan town, Newport city, Newport town, Troy town, Westfield town, Westmore town
Rutland County, VT	647	713	904	1126	1373	Benson town, Brandon town, Castleton town, Chittenden town, Clarendon town, Danby town, Fair Haven town, Hubbardton town, Ira town, Killington town, Mendon town, Middletown Springs town, Mount Holly town, Mount Tabor town, Pawlet town, Pittsfield town, Pittsford town, Poultney town, Proctor town, Rutland city, Rutland town, Shrewsbury town, Sudbury town, Tinmouth town, Wallingford town, Wells town, West Haven town, West Rutland town
Washington County, VT	788	793	983	1247	1560	Barre city, Barre town, Berlin town, Cabot town, Calais town, Duxbury town, East Montpelier town, Fayston town, Marshfield town, Middlesex town, Montpelier city, Moretown town, Northfield town, Plainfield town, Roxbury town, Waitsfield town, Warren town, Waterbury town, Woodbury town, Worcester town
Windham County, VT	648	729	972	1185	1493	Athens town, Brattleboro town, Brookline town, Dover town,

VERMONT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Dummerston town, Grafton town, Guilford town, Halifax town, Jamaica town, Londonderry town, Marlboro town, Newfane town, Putney town, Rockingham town, Somerset town, Stratton town, Townshend town, Vernon town, Wardsboro town, Westminster town, Whitingham town, Wilmington town, Windham town
Windsor County, VT	730	735	1017	1208	1326	Andover town, Baltimore town, Barnard town, Bethel town, Bridgewater town, Cavendish town, Chester town, Hartford town, Hartland town, Ludlow town, Norwich town, Plymouth town, Pomfret town, Reading town, Rochester town, Royalton town, Sharon town, Springfield town, Stockbridge town, Weathersfield town, Weston town, West Windsor town, Windsor town, Woodstock town

VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Blacksburg-Christiansburg-Radford, VA HMFA	527	618	733	1026	1298	Montgomery, Radford city
Charlottesville, VA MSA	662	875	1038	1321	1498	Albemarle, Fluvanna, Greene, Nelson, Charlottesville city
Danville, VA MSA	412	524	643	911	914	Pittsylvania, Danville city
Franklin County, VA HMFA	445	508	643	821	975	Franklin
Giles County, VA HMFA	491	542	643	937	1064	Giles
Harrisonburg, VA MSA	658	662	863	1096	1528	Rockingham, Harrisonburg city
Kingsport-Bristol-Bristol, TN-VA MSA	461	511	658	861	974	Scott, Washington, Bristol city
Louisa County, VA HMFA	572	601	713	1051	1054	Louisa
Lynchburg, VA MSA	559	611	746	955	1100	Amherst, Appomattox, Bedford, Campbell, Bedford city, Lynchburg city
Pulaski County, VA HMFA	519	542	643	820	1015	Pulaski
*Richmond, VA HMFA	797	838	993	1306	1582	Amelia, Caroline, Charles, Chesterfield, Cumberland, Dinwiddie, Goochland, Hanover, Henrico, King and Queen, King William, New Kent, Powhatan, Prince George, Sussex, Colonial Heights city, Hopewell city, Petersburg city, Richmond city
Roanoke, VA HMFA	507	587	732	959	1087	Botetourt, Craig, Roanoke, Roanoke city, Salem city
*Virginia Beach-Norfolk-Newport News, VA-NC MSA	894	920	1107	1530	1926	Gloucester, Isle of Wight, James, Mathews, Surry, York, Chesapeake city, Hampton city, Newport News city, Norfolk city, Poquoson city, Portsmouth city, Suffolk city, Virginia Beach city, Williamsburg city
Warren County, VA HMFA	679	684	910	1292	1296	Warren
Washington-Arlington-Alexandria, DC-VA-MD HMFA	1167	1230	1458	1951	2451	Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city
Winchester, VA-WV MSA	580	633	819	1114	1390	Frederick, Winchester city

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 50

VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Accomack	602	628	745	928	1184	Alleghany	544	548	674	993	1082
Augusta	513	634	801	1057	1402	Bath	524	547	649	836	1042
Bland	519	542	643	801	1033	Brunswick	508	511	692	862	1226
Buchanan	519	542	643	801	859	Buckingham	519	542	643	948	1139
Carroll	519	542	643	870	1091	Charlotte	499	502	643	870	874
Culpeper	579	759	974	1435	1725	Dickenson	472	475	643	801	859
Essex	633	732	868	1081	1394	Floyd	472	475	643	801	1033
Grayson	519	542	643	849	1139	Greensville	557	582	690	1017	1020
Halifax	498	501	643	820	859	Henry	449	540	643	826	952
Highland	519	542	643	948	951	King George	761	766	1036	1367	1617
Lancaster	645	649	878	1093	1410	Lee	519	529	643	801	1033
Lunenburg	509	512	693	863	926	Madison	787	822	974	1435	1440
Mecklenburg	536	560	664	877	957	Middlesex	551	575	682	1005	1208
Northampton	570	574	777	968	1308	Northumberland	616	620	803	1183	1187
Nottoway	612	638	757	1041	1045	Orange	619	623	843	1102	1493
Page	527	540	652	812	871	Patrick	519	542	643	823	1033
Prince Edward	582	586	775	998	1036	Rappahannock	853	891	1056	1550	1696
Richmond	570	574	777	1145	1246	Rockbridge	498	571	677	843	1182
Russell	519	542	643	884	1033	Shenandoah	493	678	816	1111	1408
Smyth	519	542	643	801	984	Southampton	606	610	806	1004	1077
Tazewell	519	542	643	813	915	Westmoreland	590	594	752	959	1208
Wise	519	542	643	801	1017	Wythe	487	491	645	829	1142
Buena Vista city	498	571	677	843	1182	Clifton Forge city	544	548	674	993	1082
Covington city	544	548	674	993	1082	Emporia city	557	582	690	1017	1020
Franklin city	606	610	806	1004	1077	Galax city	519	542	643	870	1091
Lexington city	498	571	677	843	1182	Martinsville city	449	540	643	826	952
Norton city	519	542	643	801	1017	Staunton city	513	634	801	1057	1402
Waynesboro city	513	634	801	1057	1402						

WASHINGTON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bellingham, WA MSA	613	721	948	1372	1533	Whatcom
Bremerton-Silverdale, WA MSA	607	778	1020	1465	1746	Kitsap
Kennewick-Pasco-Richland, WA MSA	566	648	829	1108	1428	Benton, Franklin
Lewiston, ID-WA MSA	425	538	695	899	1231	Asotin
Longview, WA MSA	460	599	737	1086	1305	Cowlitz
Mount Vernon-Anacortes, WA MSA	661	735	988	1387	1392	Skagit
Olympia, WA MSA	769	838	1026	1486	1817	Thurston
Portland-Vancouver-Hillsboro, OR-WA MSA	682	793	944	1391	1672	Clark, Skamania
Seattle-Bellevue, WA HMFA	811	959	1180	1739	2090	King, Snohomish
Spokane, WA MSA	467	571	773	1105	1254	Spokane
*Tacoma, WA HMFA	689	839	1093	1611	1936	Pierce
Wenatchee-East Wenatchee, WA MSA	453	563	762	959	1350	Chelan, Douglas

WASHINGTON continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Yakima, WA MSA	490	597	769	1027	1240	Yakima

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	419	542	643	898	1052	Clallam	507	619	838	1203	1208
Columbia	427	484	655	940	1072	Ferry	466	542	643	947	1052
Garfield	419	542	643	801	1045	Grant	481	513	679	918	1111
Grays Harbor	454	527	681	972	1005	Island	574	696	909	1339	1401
Jefferson	540	670	907	1130	1606	Kittitas	548	605	818	1205	1449
Klickitat	443	574	680	851	1050	Lewis	459	543	724	951	1099
Lincoln	419	475	643	801	859	Mason	522	647	876	1186	1190
Okanogan	480	535	667	848	1181	Pacific	456	619	767	1027	1200
Pend Oreille	408	506	685	901	1121	San Juan	759	764	974	1286	1302
Stevens	490	493	667	932	1181	Wahkiakum	419	475	643	801	1052
Walla Walla	477	540	731	966	1295	Whitman	465	562	736	1085	1297

WEST VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boone County, WV HMFA	463	466	628	782	936	Boone
Charleston, WV HMFA	533	599	714	940	1064	Clay, Kanawha, Lincoln, Putnam
Cumberland, MD-WV MSA	459	542	643	875	997	Mineral
Huntington-Ashland, WV-KY-OH MSA	380	519	638	843	1035	Cabell, Wayne
Jefferson County, WV HMFA	596	631	854	1126	1169	Jefferson
Martinsburg, WV HMFA	517	592	786	1015	1050	Berkeley, Morgan
Morgantown, WV MSA	607	634	752	1014	1025	Monongalia, Preston
Parkersburg-Marietta-Vienna, WV-OH MSA	456	491	642	862	948	Pleasants, Wirt, Wood
Steubenville-Weirton, OH-WV MSA	462	533	656	879	1007	Brooke, Hancock
Wheeling, WV-OH MSA	481	509	634	814	847	Marshall, Ohio
Winchester, VA-WV MSA	580	633	819	1114	1390	Hampshire

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barbour	452	490	663	826	906	Braxton	399	464	628	782	865
Calhoun	491	522	628	782	886	Doddridge	461	464	628	782	903
Fayette	436	486	628	841	871	Gilmer	520	524	664	827	938
Grant	496	499	675	841	1196	Greenbrier	496	597	708	882	1170
Hardy	516	519	699	871	986	Harrison	489	492	628	813	853
Jackson	461	464	628	804	1014	Lewis	482	485	656	817	877
Logan	507	530	628	889	892	McDowell	507	530	628	797	886
Marion	596	603	738	1082	1086	Mason	475	478	628	912	915
Mercer	490	493	631	786	843	Mingo	374	527	628	782	1030
Monroe	491	530	628	782	886	Nicholas	491	530	628	836	959
Pendleton	491	530	628	925	929	Pocahontas	497	500	677	843	955
Raleigh	554	558	735	915	982	Randolph	515	518	647	920	1126

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 52

WEST VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ritchie	491	530	628	888	891	Roane	404	530	628	925	929
Summers	491	505	628	825	839	Taylor	450	529	631	920	923
Tucker	491	530	628	925	1045	Tyler	491	517	628	782	839
Upshur	484	487	630	845	888	Webster	500	535	639	796	854
Wetzel	491	498	628	925	1112	Wyoming	491	496	628	782	1112

WISCONSIN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Appleton, WI MSA	412	538	692	1020	1080	Calumet, Outagamie
Columbia County, WI HMFA	499	551	746	1053	1121	Columbia
Duluth, MN-WI MSA	478	574	755	984	1096	Douglas
Eau Claire, WI MSA	502	584	748	1101	1141	Chippewa, Eau Claire
Fond du Lac, WI MSA	452	564	753	961	1157	Fond du Lac
Green Bay, WI HMFA	468	569	754	1077	1106	Brown, Kewaunee
Iowa County, WI HMFA	520	557	754	976	1008	Iowa
Janesville, WI MSA	449	572	755	952	1009	Rock
Kenosha County, WI HMFA	587	701	899	1306	1368	Kenosha
La Crosse, WI-MN MSA	433	542	728	1012	1232	La Crosse
Madison, WI HMFA	640	766	928	1280	1426	Dane
*Milwaukee-Waukesha-West Allis, WI MSA	579	713	896	1143	1236	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul-Bloomington, MN-WI MSA	641	796	996	1403	1656	Pierce, St. Croix
Oconto County, WI HMFA	468	519	643	919	922	Oconto
Oshkosh-Neenah, WI MSA	474	513	665	886	1178	Winnebago
Racine, WI MSA	561	565	763	1001	1020	Racine
Sheboygan, WI MSA	468	556	690	906	932	Sheboygan
Wausau, WI MSA	501	521	679	959	1039	Marathon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	408	542	643	871	1005	Ashland	408	501	643	829	859
Barron	408	530	685	856	1099	Bayfield	383	542	643	896	900
Buffalo	496	499	675	890	968	Burnett	408	521	643	948	951
Clark	388	475	643	801	859	Crawford	472	475	643	805	922
Dodge	444	569	747	953	998	Door	404	557	679	890	907
Dunn	422	484	655	826	875	Florence	408	487	643	801	889
Forest	408	475	643	839	859	Grant	441	489	643	818	996
Green	436	508	687	856	933	Green Lake	408	499	643	879	1139
Iron	383	475	643	876	1139	Jackson	384	477	645	803	862
Jefferson	493	632	829	1118	1247	Juneau	443	489	645	907	1142
Lafayette	408	493	643	875	940	Langlade	472	543	695	1024	1231
Lincoln	408	475	643	948	1055	Manitowoc	429	482	643	801	964
Marinette	493	497	643	922	1060	Marquette	399	496	671	836	897
Menominee	408	475	643	801	859	Monroe	428	538	719	966	1090
Oneida	551	575	708	946	1254	Pepin	408	542	643	948	951

WISCONSIN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Polk	429	533	721	957	964	Portage	405	503	676	842	922
Price	408	475	643	801	981	Richland	461	523	643	831	1065
Rusk	473	476	644	854	1141	Sauk	525	582	763	956	1020
Sawyer	408	542	643	801	859	Shawano	472	475	643	886	1020
Taylor	383	475	643	801	859	Trempealeau	416	475	643	859	1048
Vernon	408	475	643	819	859	Vilas	502	506	684	852	1090
Walworth	576	632	838	1193	1222	Washburn	444	520	700	921	968
Waupaca	477	481	643	853	881	Waushara	475	478	647	825	865
Wood	429	496	643	861	953						

WYOMING

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Casper, WY MSA	500	572	757	1115	1325	Natrona
Cheyenne, WY MSA	519	590	798	1094	1282	Laramie

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Albany	566	590	761	1089	1155	Big Horn	472	475	643	901	922
Campbell	699	729	914	1151	1221	Carbon	498	502	679	908	1005
Converse	485	489	661	974	977	Crook	545	601	713	1051	1263
Fremont	516	526	712	967	971	Goshen	475	478	643	885	888
Hot Springs	492	542	643	948	1139	Johnson	513	549	671	989	1060
Lincoln	568	614	743	1095	1099	Niobrara	492	542	643	900	1014
Park	460	509	643	918	1139	Platte	492	542	643	898	981
Sheridan	628	662	821	1023	1454	Sublette	615	679	805	1177	1181
Sweetwater	560	669	905	1127	1603	Teton	774	921	1112	1639	1696
Uinta	492	496	660	923	1101	Washakie	492	542	643	911	1096
Weston	511	519	668	832	1019						

GUAM

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	812	871	1064	1550	1853						

PUERTO RICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Aguadilla-Isabela-San Sebastián, PR MSA	420	443	530	683	725	Aguada, Aguadilla, Añasco, Isabela, Lares, Moca, Rincón, San Sebastián
Arecibo, PR HMFA	370	390	468	647	660	Arecibo, Camuy, Hatillo
Barranquitas-Aibonito-Quebradillas, PR HMFA	314	350	420	519	570	Aibonito, Barranquitas, Ciales, Maunabo, Orocovis, Quebradillas
Caguas, PR HMFA	415	423	550	799	901	Caguas, Cayey, Cidra, Gurabo, San Lorenzo

SCHEDULE B - FY 2015 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 54

PUERTO RICO continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fajardo, PR MSA	432	455	545	792	850	Ceiba, Fajardo, Luquillo
Guayama, PR MSA	331	412	558	691	773	Arroyo, Guayama, Patillas
Mayagüez, PR MSA	375	396	475	630	798	Hormigueros, Mayagüez
Ponce, PR MSA	400	422	506	734	884	Juana Díaz, Ponce, Villalba
San Germán-Cabo Rojo, PR MSA	335	354	425	599	718	Cabo Rojo, Lajas, Sabana Grande, San Germán
San Juan-Guaynabo, PR HMFA	464	502	601	810	975	Aguas Buenas, Barceloneta, Bayamón, Canóvanas, Carolina, Cataño, Comerío, Corozal, Dorado, Florida, Guaynabo, Humacao, Juncos, Las Piedras, Loíza, Manatí, Morovis, Naguabo, Naranjito, Río Grande, San Juan, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Yabucoa
Yauco, PR MSA	330	349	419	560	730	Guánica, Guayanilla, Peñuelas, Yauco

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adjuntas	319	327	405	527	615	Coamo	319	327	405	527	615
Culebra	319	327	405	527	615	Jayuya	319	327	405	527	615
Las Marías	319	327	405	527	615	Maricao	319	327	405	527	615
Salinas	319	327	405	527	615	Santa Isabel	319	327	405	527	615
Utuado	319	327	405	527	615	Vieques	319	327	405	527	615

VIRGIN ISLANDS

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
St. Croix	602	627	760	949	1086	St. John	684	817	1052	1303	1362
St. Thomas	684	817	1052	1303	1362						

Note1: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.
Note2: 50th percentile FMRs are indicated by an * before the FMR Area name.
Note3: PHAs participating in the Small Area Demonstration Program and the PHAs serving Dallas, TX using small area FMRs will use the FMRs found on Schedule B Addendum.

09/22/2014

SCHEDULE B Addendum - FINAL FY 2015 SMALL AREA FAIR MARKET RENTS FOR DEMONSTRATION PARTICIPANTS AND THE DALLAS, TX HUD METRO FMR AREA

The Housing Authority of the City of Long Beach -- ZIP Codes in Los Angeles County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
90802	750	910	1190	1630	1830	90803	960	1170	1530	2100	2350
90804	830	1010	1320	1810	2030	90805	780	960	1250	1710	1920
90806	760	930	1210	1660	1860	90807	880	1070	1400	1920	2150
90808	1030	1270	1650	2260	2530	90810	750	920	1200	1640	1840
90813	700	860	1120	1540	1720	90815	1120	1370	1790	2450	2750
90822	880	1070	1400	1920	2150						

The Housing Authority of the County of Cook -- ZIP Codes in Cook County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
60004	910	1030	1220	1560	1810	60005	820	940	1110	1420	1650
60006	760	870	1030	1310	1530	60007	800	910	1080	1380	1610
60008	860	980	1160	1480	1720	60010	1120	1270	1510	1920	2240
60011	760	870	1030	1310	1530	60016	790	900	1070	1360	1590
60018	680	770	910	1160	1350	60022	1020	1160	1380	1760	2050
60025	870	990	1170	1490	1740	60026	1010	1150	1360	1730	2020
60029	760	870	1030	1310	1530	60043	760	870	1030	1310	1530
60053	890	1010	1200	1530	1780	60056	760	860	1020	1300	1520
60062	970	1100	1300	1660	1930	60065	760	870	1030	1310	1530
60067	910	1030	1220	1560	1810	60068	940	1060	1260	1610	1870
60070	790	900	1070	1360	1590	60074	810	920	1090	1390	1620
60076	920	1050	1240	1580	1840	60077	850	970	1150	1470	1710
60089	1020	1160	1380	1760	2050	60090	820	940	1110	1420	1650
60091	1140	1300	1540	1960	2290	60093	1110	1260	1490	1900	2210
60103	970	1100	1300	1660	1930	60104	760	860	1020	1300	1520
60107	1140	1300	1540	1960	2290	60120	760	870	1030	1310	1530
60130	740	840	1000	1270	1490	60131	650	730	870	1110	1290
60133	810	920	1090	1390	1620	60141	760	870	1030	1310	1530
60153	760	870	1030	1310	1530	60154	1030	1170	1390	1770	2070
60155	650	730	870	1110	1290	60160	680	770	910	1160	1350
60161	760	870	1030	1310	1530	60162	670	760	900	1150	1340
60163	790	890	1060	1350	1580	60164	650	740	880	1120	1310
60165	720	820	970	1240	1440	60168	760	870	1030	1310	1530
60169	830	940	1120	1430	1660	60171	690	780	930	1190	1380
60172	820	940	1110	1420	1650	60173	960	1090	1290	1640	1920
60176	710	810	960	1220	1430	60192	1140	1300	1540	1960	2290
60193	940	1070	1270	1620	1890	60194	950	1080	1280	1630	1900
60195	970	1100	1310	1670	1950	60201	980	1110	1320	1680	1960
60202	850	970	1150	1470	1710	60203	1140	1300	1540	1960	2290
60301	940	1070	1270	1620	1890	60302	770	880	1040	1330	1550
60303	760	870	1030	1310	1530	60304	730	830	980	1250	1460
60305	760	860	1020	1300	1520	60402	710	800	950	1210	1410

SCHEDULE B Addendum - FINAL FY 2015 SMALL AREA FAIR MARKET RENTS FOR DEMONSTRATION PARTICIPANTS AND THE DALLAS, TX HUD METRO FMR AREA

The Housing Authority of the County of Cook -- ZIP Codes in Cook County continued

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
60406	650	740	880	1120	1310	60409	710	810	960	1220	1430
60411	730	830	980	1250	1460	60412	760	870	1030	1310	1530
60415	710	800	950	1210	1410	60419	820	940	1110	1420	1650
60422	1140	1300	1540	1960	2290	60425	740	840	1000	1270	1490
60426	770	880	1040	1330	1550	60428	980	1110	1320	1680	1960
60429	970	1100	1310	1670	1950	60430	720	820	970	1240	1440
60438	710	810	960	1220	1430	60439	680	780	920	1170	1370
60443	950	1080	1280	1630	1900	60445	710	800	950	1210	1410
60452	740	840	1000	1270	1490	60453	740	840	990	1260	1470
60454	760	870	1030	1310	1530	60455	680	780	920	1170	1370
60456	480	540	640	820	950	60457	690	780	930	1190	1380
60458	750	850	1010	1290	1500	60459	750	850	1010	1290	1500
60461	760	870	1030	1310	1530	60462	790	890	1060	1350	1580
60463	1140	1300	1540	1960	2290	60464	1140	1300	1540	1960	2290
60465	760	860	1020	1300	1520	60466	750	850	1010	1290	1500
60467	1140	1300	1540	1960	2290	60469	840	950	1130	1440	1680
60471	810	920	1090	1390	1620	60472	680	780	920	1170	1370
60473	1140	1290	1530	1950	2270	60475	660	750	890	1130	1320
60476	650	740	880	1120	1310	60477	770	880	1040	1330	1550
60478	1140	1300	1540	1960	2290	60480	660	750	890	1130	1320
60482	710	810	960	1220	1430	60487	890	1010	1200	1530	1780
60499	760	870	1030	1310	1530	60501	710	810	960	1220	1430
60513	810	920	1090	1390	1620	60521	910	1040	1230	1570	1830
60525	740	840	1000	1270	1490	60526	810	920	1090	1390	1620
60527	850	960	1140	1450	1690	60534	730	830	980	1250	1460
60546	700	790	940	1200	1400	60558	760	870	1030	1310	1530
60601	1140	1300	1540	1960	2290	60602	1140	1300	1540	1960	2290
60603	1140	1300	1540	1960	2290	60604	1140	1300	1540	1960	2290
60605	1140	1300	1540	1960	2290	60606	1140	1300	1540	1960	2290
60607	1060	1210	1430	1820	2130	60608	640	730	860	1100	1280
60609	670	760	900	1150	1340	60610	1010	1150	1360	1730	2020
60611	1140	1300	1540	1960	2290	60612	790	900	1070	1360	1590
60613	890	1010	1200	1530	1780	60614	1010	1150	1360	1730	2020
60615	740	840	990	1260	1470	60616	740	840	990	1260	1470
60617	670	760	900	1150	1340	60618	790	900	1070	1360	1590
60619	680	770	910	1160	1350	60620	710	800	950	1210	1410
60621	710	800	950	1210	1410	60622	900	1020	1210	1540	1800
60623	650	740	880	1120	1310	60624	790	890	1060	1350	1580
60625	760	860	1020	1300	1520	60626	680	780	920	1170	1370
60628	780	890	1050	1340	1560	60629	710	810	960	1220	1430
60630	760	860	1020	1300	1520	60631	810	920	1090	1390	1620

SCHEDULE B Addendum - FINAL FY 2015 SMALL AREA FAIR MARKET RENTS FOR DEMONSTRATION PARTICIPANTS AND THE DALLAS, TX HUD METRO FMR AREA

The Housing Authority of the County of Cook -- ZIP Codes in Cook County continued

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
60632	680	770	910	1160	1350	60633	690	780	930	1190	1380
60634	750	850	1010	1290	1500	60636	750	850	1010	1290	1500
60637	730	830	980	1250	1460	60638	710	800	950	1210	1410
60639	740	840	1000	1270	1490	60640	680	780	920	1170	1370
60641	710	810	960	1220	1430	60642	880	1000	1190	1520	1770
60643	740	840	990	1260	1470	60644	700	790	940	1200	1400
60645	770	880	1040	1330	1550	60646	740	840	1000	1270	1490
60647	790	890	1060	1350	1580	60649	670	760	900	1150	1340
60651	780	890	1050	1340	1560	60652	810	920	1090	1390	1620
60653	610	690	820	1050	1220	60654	1140	1300	1540	1960	2290
60655	720	820	970	1240	1440	60656	810	920	1090	1390	1620
60657	940	1060	1260	1610	1870	60659	770	880	1040	1330	1550
60660	680	770	910	1160	1350	60661	1140	1290	1530	1950	2270
60681	760	870	1030	1310	1530	60693	760	870	1030	1310	1530
60706	700	790	940	1200	1400	60707	710	810	960	1220	1430
60712	1140	1300	1540	1960	2290	60714	750	850	1010	1290	1500
60803	670	760	900	1150	1340	60804	650	740	880	1120	1310
60805	800	910	1080	1380	1610	60827	760	860	1020	1300	1520

Town of Mamaroneck Public Housing Agency -- ZIP Codes in Westchester County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
10501	1240	1300	1540	2000	2360	10502	1750	1830	2170	2820	3330
10503	1240	1300	1540	2000	2360	10504	1750	1830	2170	2820	3330
10505	1240	1300	1540	2000	2360	10506	1360	1420	1680	2190	2570
10507	1450	1510	1790	2330	2740	10510	1570	1640	1940	2520	2970
10511	1210	1270	1500	1950	2300	10514	1710	1790	2120	2760	3250
10517	1710	1790	2120	2760	3250	10518	1240	1300	1540	2000	2360
10519	1240	1300	1540	2000	2360	10520	1200	1260	1490	1940	2280
10522	1390	1450	1720	2240	2640	10523	1750	1830	2170	2820	3330
10526	1240	1300	1540	2000	2360	10527	1240	1300	1540	2000	2360
10528	1750	1830	2170	2820	3330	10530	1410	1480	1750	2280	2680
10532	1240	1300	1540	2000	2360	10533	1510	1580	1870	2430	2870
10535	1580	1640	1950	2540	2990	10536	1390	1450	1720	2240	2640
10537	950	1000	1180	1530	1810	10538	1450	1510	1790	2330	2740
10540	1240	1300	1540	2000	2360	10543	1510	1580	1870	2430	2870
10546	1370	1430	1700	2210	2610	10547	1170	1220	1450	1890	2220
10548	1400	1460	1730	2250	2650	10549	1280	1330	1580	2060	2420
10550	1090	1140	1350	1760	2070	10551	1240	1300	1540	2000	2360
10552	1140	1190	1410	1830	2160	10553	1220	1270	1510	1960	2310
10560	1240	1300	1540	2000	2360	10562	1290	1350	1600	2080	2450

SCHEDULE B Addendum - FINAL FY 2015 SMALL AREA FAIR MARKET RENTS FOR DEMONSTRATION PARTICIPANTS AND THE DALLAS, TX HUD METRO FMR AREA

Town of Mamaroneck Public Housing Agency -- ZIP Codes in Westchester County continued

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
10566	1260	1320	1560	2030	2390	10567	1570	1640	1940	2520	2970
10570	1530	1600	1900	2470	2910	10573	1390	1450	1720	2240	2640
10576	1750	1830	2170	2820	3330	10577	1240	1300	1540	2000	2360
10578	1240	1300	1540	2000	2360	10580	1660	1730	2050	2670	3140
10583	1750	1830	2170	2820	3330	10588	860	890	1060	1380	1620
10589	1240	1300	1540	2000	2360	10590	1740	1820	2160	2810	3310
10591	1340	1400	1660	2160	2540	10594	1650	1720	2040	2650	3130
10595	1390	1450	1720	2240	2640	10596	980	1020	1210	1570	1850
10597	1240	1300	1540	2000	2360	10598	1360	1420	1680	2190	2570
10601	1250	1310	1550	2020	2380	10602	1240	1300	1540	2000	2360
10603	1380	1440	1710	2220	2620	10604	1440	1500	1780	2320	2730
10605	1270	1320	1570	2040	2410	10606	1450	1510	1790	2330	2740
10607	1670	1750	2070	2690	3170	10701	1100	1150	1360	1770	2080
10702	1240	1300	1540	2000	2360	10703	1130	1180	1400	1820	2150
10704	1230	1280	1520	1980	2330	10705	1070	1120	1330	1730	2040
10706	1210	1270	1500	1950	2300	10707	1420	1480	1760	2290	2700
10708	1440	1500	1780	2320	2730	10709	1410	1480	1750	2280	2680
10710	1130	1180	1400	1820	2150	10801	1210	1270	1500	1950	2300
10802	1240	1300	1540	2000	2360	10803	1280	1340	1590	2070	2440
10804	1520	1590	1880	2450	2880	10805	1270	1320	1570	2040	2410

Chattanooga Housing Authority -- ZIP Codes in Hamilton County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
37302	450	550	680	920	1040	37308	490	590	730	990	1120
37311	490	590	730	990	1120	37315	490	590	730	990	1120
37336	440	530	660	900	1010	37341	630	760	950	1290	1460
37343	520	630	780	1060	1200	37350	490	590	730	990	1120
37351	550	660	820	1120	1260	37353	470	570	710	970	1090
37363	520	630	780	1060	1200	37373	470	570	710	970	1090
37377	520	630	780	1060	1200	37379	510	610	760	1030	1160
37401	490	590	730	990	1120	37402	390	470	590	800	900
37403	390	470	590	800	900	37404	450	550	680	920	1040
37405	490	590	740	1010	1130	37406	410	500	620	840	950
37407	500	600	750	1020	1150	37408	390	470	590	800	900
37409	470	570	710	970	1090	37410	400	480	600	820	920
37411	450	550	680	920	1040	37412	470	570	710	970	1090
37414	490	590	730	990	1120	37415	470	570	710	970	1090
37416	520	630	780	1060	1200	37419	440	530	660	900	1010
37421	530	640	790	1070	1210						

SCHEDULE B Addendum - FINAL FY 2015 SMALL AREA FAIR MARKET RENTS FOR DEMONSTRATION PARTICIPANTS AND THE DALLAS, TX HUD METRO FMR AREA

The Housing Authority of the City of Laredo -- ZIP Codes in Webb County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
78040	500	540	680	890	920	78041	610	660	830	1090	1130
78043	560	600	760	1000	1030	78045	720	780	980	1290	1330
78046	550	590	740	970	1010						

All Housing Authorities within the Dallas, TX HMFA -- ZIP Codes in Collin County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75002	780	930	1180	1570	1900	75009	630	750	950	1270	1530
75013	780	940	1190	1590	1920	75023	730	870	1100	1470	1770
75024	710	850	1070	1430	1720	75025	780	940	1190	1590	1920
75034	750	900	1140	1520	1840	75035	900	1080	1360	1810	2190
75048	770	930	1170	1560	1880	75069	610	730	920	1230	1480
75070	870	1040	1320	1760	2130	75071	640	770	970	1290	1560
75074	650	780	990	1320	1590	75075	660	790	1000	1330	1610
75078	760	920	1160	1550	1870	75080	720	860	1090	1450	1760
75082	760	910	1150	1530	1850	75093	710	850	1070	1430	1720
75094	910	1090	1380	1840	2220	75098	760	910	1150	1530	1850
75164	570	690	870	1160	1400	75166	910	1090	1380	1840	2220
75173	760	910	1150	1530	1850	75189	690	830	1050	1400	1690
75252	550	660	840	1120	1350	75287	590	700	890	1190	1430
75370	690	820	1040	1390	1680	75407	690	830	1050	1400	1690
75409	650	780	990	1320	1590	75424	650	780	990	1320	1590
75442	560	670	850	1130	1370	75452	550	660	830	1110	1340
75454	760	910	1150	1530	1850	75491	690	820	1040	1390	1680
75495	580	700	880	1170	1420						

All Housing Authorities within the Dallas, TX HMFA -- ZIP Codes in Dallas County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75001	650	770	980	1310	1580	75006	610	740	930	1240	1500
75007	670	810	1020	1360	1640	75015	590	710	900	1200	1450
75016	590	710	900	1200	1450	75017	590	710	900	1200	1450
75019	770	930	1170	1560	1880	75030	590	710	900	1200	1450
75038	610	730	920	1230	1480	75039	750	890	1130	1510	1820
75040	750	900	1140	1520	1840	75041	600	720	910	1210	1470
75042	570	690	870	1160	1400	75043	630	760	960	1280	1550
75044	700	840	1060	1410	1710	75045	590	710	900	1200	1450
75046	590	710	900	1200	1450	75048	770	930	1170	1560	1880
75050	570	680	860	1150	1390	75051	570	680	860	1150	1390
75052	740	890	1120	1490	1800	75053	590	710	900	1200	1450
75060	550	660	840	1120	1350	75061	520	620	790	1050	1270
75062	570	690	870	1160	1400	75063	700	840	1060	1410	1710
75080	720	860	1090	1450	1760	75081	730	880	1110	1480	1790

SCHEDULE B Addendum - FINAL FY 2015 SMALL AREA FAIR MARKET RENTS FOR DEMONSTRATION PARTICIPANTS AND THE DALLAS, TX HUD METRO FMR AREA

All Housing Authorities within the Dallas, TX HMFA -- ZIP Codes in Dallas County continued

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75082	760	910	1150	1530	1850	75083	590	710	900	1200	1450
75085	590	710	900	1200	1450	75088	880	1050	1330	1770	2140
75089	910	1090	1380	1840	2220	75104	790	950	1200	1600	1930
75106	590	710	900	1200	1450	75115	630	750	950	1270	1530
75116	640	770	970	1290	1560	75123	590	710	900	1200	1450
75134	630	760	960	1280	1550	75137	780	940	1190	1590	1920
75141	570	680	860	1150	1390	75146	620	740	940	1250	1510
75149	670	810	1020	1360	1640	75150	630	750	950	1270	1530
75154	760	910	1150	1530	1850	75159	630	750	950	1270	1530
75172	490	590	750	1000	1210	75180	560	670	850	1130	1370
75181	910	1090	1380	1840	2220	75182	590	710	900	1200	1450
75185	590	710	900	1200	1450	75187	590	710	900	1200	1450
75201	860	1030	1300	1730	2090	75202	910	1090	1380	1840	2220
75203	460	550	700	930	1130	75204	780	930	1180	1570	1900
75205	750	900	1140	1520	1840	75206	630	750	950	1270	1530
75207	610	730	920	1230	1480	75208	530	630	800	1070	1290
75209	780	930	1180	1570	1900	75210	460	550	700	930	1130
75211	540	650	820	1090	1320	75212	530	630	800	1070	1290
75214	570	680	860	1150	1390	75215	500	600	760	1010	1220
75216	530	640	810	1080	1300	75217	590	710	900	1200	1450
75218	670	810	1020	1360	1640	75219	620	740	940	1250	1510
75220	510	610	770	1030	1240	75222	590	710	900	1200	1450
75223	550	660	830	1110	1340	75224	510	620	780	1040	1260
75225	910	1090	1380	1840	2220	75226	730	870	1100	1470	1770
75227	550	660	840	1120	1350	75228	490	590	740	990	1190
75229	570	690	870	1160	1400	75230	510	610	770	1030	1240
75231	480	580	730	970	1180	75232	540	650	820	1090	1320
75233	570	680	860	1150	1390	75234	610	740	930	1240	1500
75235	590	710	900	1200	1450	75236	580	700	880	1170	1420
75237	540	650	820	1090	1320	75238	520	620	790	1050	1270
75240	550	660	830	1110	1340	75241	630	760	960	1280	1550
75242	590	710	900	1200	1450	75243	530	630	800	1070	1290
75244	760	920	1160	1550	1870	75246	460	550	690	920	1110
75247	500	600	760	1010	1220	75248	670	800	1010	1350	1630
75249	750	890	1130	1510	1820	75250	590	710	900	1200	1450
75251	800	960	1220	1630	1970	75253	580	700	880	1170	1420
75254	610	730	920	1230	1480	75313	590	710	900	1200	1450
75354	590	710	900	1200	1450	75355	590	710	900	1200	1450
75356	590	710	900	1200	1450	75367	590	710	900	1200	1450
75374	590	710	900	1200	1450	75378	590	710	900	1200	1450
75379	590	710	900	1200	1450	75381	590	710	900	1200	1450

SCHEDULE B Addendum - FINAL FY 2015 SMALL AREA FAIR MARKET RENTS FOR DEMONSTRATION PARTICIPANTS AND THE DALLAS, TX HUD METRO FMR AREA

All Housing Authorities within the Dallas, TX HMFA -- ZIP Codes in Dallas County continued

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75382	590	710	900	1200	1450						

All Housing Authorities within the Dallas, TX HMFA -- ZIP Codes in Delta County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75415	560	670	850	1130	1370	75432	530	640	810	1080	1300
75441	560	670	850	1130	1370	75448	560	670	850	1130	1370
75450	560	670	850	1130	1370	75469	560	670	850	1130	1370

All Housing Authorities within the Dallas, TX HMFA -- ZIP Codes in Denton County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75007	670	810	1020	1360	1640	75009	630	750	950	1270	1530
75010	770	930	1170	1560	1880	75022	780	930	1180	1570	1900
75028	910	1090	1380	1840	2220	75034	750	900	1140	1520	1840
75056	820	990	1250	1670	2010	75057	630	750	950	1270	1530
75065	680	810	1030	1370	1660	75067	630	750	950	1270	1530
75068	730	880	1110	1480	1790	75077	800	960	1210	1610	1950
75093	710	850	1070	1430	1720	75287	590	700	890	1190	1430
76052	910	1090	1380	1840	2220	76177	600	720	910	1210	1470
76201	480	580	730	970	1180	76202	630	750	950	1270	1530
76205	590	700	890	1190	1430	76207	570	680	860	1150	1390
76208	630	760	960	1280	1550	76209	580	700	880	1170	1420
76210	740	890	1120	1490	1800	76226	910	1090	1380	1840	2220
76227	860	1030	1300	1730	2090	76247	730	870	1100	1470	1770
76249	760	920	1160	1550	1870	76258	580	700	880	1170	1420
76259	650	770	980	1310	1580	76262	730	880	1110	1480	1790
76266	650	770	980	1310	1580	76272	630	750	950	1270	1530

All Housing Authorities within the Dallas, TX HMFA -- ZIP Codes in Ellis County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75101	560	670	850	1130	1370	75119	560	670	850	1130	1370
75125	560	670	850	1130	1370	75152	500	600	760	1010	1220
75154	760	910	1150	1530	1850	75165	610	740	930	1240	1500
75167	760	920	1160	1550	1870	75168	610	730	920	1230	1480
76041	610	730	920	1230	1480	76064	700	840	1060	1410	1710
76065	640	770	970	1290	1560	76084	630	750	950	1270	1530
76623	610	730	920	1230	1480	76651	690	820	1040	1390	1680
76670	490	590	740	990	1190						

SCHEDULE B Addendum - FINAL FY 2015 SMALL AREA FAIR MARKET RENTS FOR DEMONSTRATION PARTICIPANTS AND THE DALLAS, TX HUD METRO FMR AREA

All Housing Authorities within the Dallas, TX HMFA -- ZIP Codes in Hunt County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75135	550	660	840	1120	1350	75160	590	700	890	1190	1430
75169	510	610	770	1030	1240	75189	690	830	1050	1400	1690
75401	500	600	760	1010	1220	75402	520	620	790	1050	1270
75403	500	600	760	1010	1220	75422	530	630	800	1070	1290
75423	530	640	810	1080	1300	75428	420	510	640	850	1030
75442	560	670	850	1130	1370	75449	420	510	640	850	1030
75452	550	660	830	1110	1340	75453	670	810	1020	1360	1640
75474	460	550	700	930	1130	75496	420	510	640	850	1030

All Housing Authorities within the Dallas, TX HMFA -- ZIP Codes in Kaufman County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75114	750	900	1140	1520	1840	75126	910	1090	1380	1840	2220
75142	550	660	840	1120	1350	75143	520	620	790	1050	1270
75147	520	620	790	1050	1270	75157	450	540	680	910	1100
75158	530	640	810	1080	1300	75159	630	750	950	1270	1530
75160	590	700	890	1190	1430	75161	590	710	900	1200	1450

All Housing Authorities within the Dallas, TX HMFA -- ZIP Codes in Rockwall County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75032	840	1010	1280	1710	2060	75087	770	930	1170	1560	1880
75088	880	1050	1330	1770	2140	75089	910	1090	1380	1840	2220
75132	800	960	1210	1610	1950	75189	690	830	1050	1400	1690

SCHEDULE D—FY 2015 EXCEPTION FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES IN THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

State	Area name	Space rent
California	Los Angeles-Long Beach, CA HUD Metro FMR Area	$694
	Orange County, CA HUD Metro FMR Area	842
	*Riverside-San Bernardino-Ontario, CA MSA	549
	San Diego-Carlsbad-San Marcos, CA MSA	839
	Santa Rosa-Petaluma, CA MSA	773
	Vallejo-Fairfield, CA MSA	622
Colorado	Boulder, CO MSA	512
Maryland	St. Mary's County	518
Oregon	Bend, OR MSA	361
	Salem, OR MSA	523
Pennsylvania	Adams County	579
Washington	Olympia, WA MSA	628
	Seattle-Bellevue, WA HUD Metro FMR Area	693
West Virginia	Logan County	469
	McDowell County	469
	Mercer County	469
	Mingo County	469
	Wyoming County	469

*50th percentile FMR areas.

[FR Doc. 2014–23677 Filed 10–2–14; 8:45 am]

BILLING CODE 4210–67–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5815–N–01]

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2015

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This document designates ''Difficult Development Areas'' (DDAs) and ''Qualified Census Tracts'' (QCTs) for purposes of the Low-Income Housing Tax Credit (LIHTC) under Internal Revenue Code (IRC) Section 42 (26 U.S.C. 42). The United States Department of Housing and Urban Development (HUD) makes new DDA designations annually and is making new designation of QCTs at this time to incorporate more recent income and poverty measures. As previously announced, the 2015 metropolitan DDA designations will be the last designated for entire metropolitan areas. Beginning with the 2016 DDA designations, metropolitan DDAs will use Small Area Fair Market Rents (FMRs), rather than metropolitan-area FMRs, for designating metropolitan DDAs.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions, contact Michael K. Hollar, Senior Economist, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street SW., Room 8234, Washington, DC 20410–6000; telephone number (202) 402–5878, or send an email to *Michael.K.Hollar@hud.gov.* For specific legal questions pertaining to Section 42, contact Branch 5, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224; telephone number (202) 317–4137, fax number (202) 317–6731. For questions about the ''HUB Zone'' program, contact Mariana Pardo, Director, HUBZone Program, Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 Third Street SW., Suite 8800, Washington, DC 20416; telephone number (202) 205–2985, fax number (202) 481–6443, or send an email to *hubzone@sba.gov.* A text telephone is available for persons with hearing or speech impairments at 800–877–8339. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at 800–245–2691 for a small fee to cover duplication and mailing costs.

Copies Available Electronically: This notice and additional information about DDAs and QCTs are available electronically on the Internet at *http://www.huduser.org/datasets/qct.html.*

SUPPLEMENTARY INFORMATION:

This Document

This notice designates DDAs for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. The designations of DDAs in this notice are based on final Fiscal Year (FY) 2014 Fair Market Rents (FMRs), FY2014 income limits, and 2010 Census population counts, as explained below.

This notice also re-designates QCTs based on new income and poverty data released in the American Community Survey (ACS). HUD is establishing a new method which incorporates several years of ACS estimates to ensure that anomalous estimates, due to sampling anomalies, do not affect the QCT eligibility of tracts.

2010 Census and 2006–2010, 2007–2011 and 2008–2012 American Community Survey Data

Data from the 2010 Census on total population of metropolitan areas and nonmetropolitan areas are used in the designation of DDAs. The Office of Management and Budget (OMB) first published new metropolitan area definitions incorporating 2000 Census data in OMB Bulletin No. 03–04 on June 6, 2003, and updated them periodically through OMB Bulletin No. 10–02 on December 1, 2009. FY2014 FMRs and FY2014 income limits used to designate DDAs are based on these metropolitan statistical area (MSA) definitions, with modifications to account for substantial differences in rental housing markets (and, in some cases, median income levels) within MSAs.

Data from the 2010 Census on total population of census tracts, metropolitan areas, and the nonmetropolitan parts of states are used in the designation of QCTs. The FY2012, FY2013 and FY2014 income limits used to designate QCTs are based on these metropolitan statistical area

(MSA) definitions with modifications to account for substantial differences in rental housing markets (and in some cases median income levels) within MSAs. This QCT designation uses the OMB metropolitan area definitions published in OMB Bulletin No. 10–02 on December 1, 2009 without modification for purposes of evaluating how many census tracts can be designated under the population cap, but uses the HUD-modified definitions and their associated area median incomes for determining QCT eligibility.

Because the 2010 Decennial Census did not include questions on respondent household income, HUD uses ACS data to designate QCTs. The ACS tabulates data collected over 5 years to provide estimates of socioeconomic variables for small areas containing fewer than 20,000 persons, like Census Tracts. Although the previous QCT designations relied on one set of estimates, based on 2006–2010 ACS tabulations, HUD noticed anomalies in some estimates when compared to 2007–2011 and 2008–2012 estimates. For this reason, HUD is implementing a new QCT designation method which incorporates several years of ACS data to ensure that anomalous estimates do not affect QCT eligibility.

Background

The U.S. Department of the Treasury (Treasury) and its Internal Revenue Service (IRS) are authorized to interpret and enforce the provisions of the LIHTC found at IRC Section 42. The Secretary of HUD is required to designate DDAs and QCTs by IRC Section 42(d)(5)(B). In order to assist in understanding HUD's mandated designation of DDAs and QCTs for use in administering IRC Section 42, a summary of the section is provided. The following summary does not purport to bind Treasury or the IRS in any way, nor does it purport to bind HUD, since HUD has authority to interpret or administer the IRC only in instances where it receives explicit statutory delegation.

Summary of the Low-Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low-income housing. IRC Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Each state is allowed a credit ceiling based on a statutory formula indicated at IRC Section 42(h)(3). States may carry forward unallocated credits derived from the credit ceiling for one year; however, to the extent such unallocated credits are not used by then, the credits go into a national pool to be redistributed to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides IRC Section 42 credits derived from the credit ceiling, states may also provide IRC Section 42 credits to owners of buildings based on the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided under the tax-exempt bond ''volume cap'' do not reduce the credits available from the credit ceiling.

The credits allocated to a building are based on the cost of units placed in service as low-income units under particular minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC; either: (1) 20 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income (AMGI), or (2) 40 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. A unit is ''rent-restricted'' if the gross rent, including an allowance for tenant-paid utilities, does not exceed 30 percent of the imputed income limitation (i.e., 50 percent or 60 percent of AMGI) applicable to that unit. The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar-for-dollar. It is taken annually for a term of 10 years and is intended to yield a present value of either: (1) 70 percent of the ''qualified basis'' for new construction or substantial rehabilitation expenditures that are not federally subsidized (as defined in IRC Section 42(i)(2)), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing buildings or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in IRC Section 42. Individuals can use the credits up to a deduction equivalent of $25,000 (the actual maximum amount of credit that an individual can claim depends on the individual's marginal tax rate). For buildings placed in service after December 31, 2007, individuals can use the credits against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credits against ordinary income tax, and, for buildings placed in service after December 31, 2007, against the alternative minimum tax. These corporations also can deduct losses from the project.

The qualified basis represents the product of the building's ''applicable fraction'' and its ''eligible basis.'' The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low-income units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to a capital account that are incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated DDAs or designated QCTs, eligible basis can be increased up to 130 percent from what it would otherwise be. This means that the available credits also can be increased by up to 30 percent. For example, if a 70 percent credit is available, it effectively could be increased to as much as 91 percent.

IRC Section 42 defines a DDA as an area designated by the Secretary of HUD that has high construction, land, and utility costs relative to the AMGI. All designated DDAs in metropolitan areas (taken together) may not contain more than 20 percent of the aggregate population of all metropolitan areas, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all nonmetropolitan areas.

IRC Section 42(d)(5)(B)(v) allows states to award an increase in basis up to 30 percent to buildings located outside of federally designated DDAs and QCTs if the increase is necessary to make the building financially feasible. This state discretion applies only to buildings allocated credits under the state housing credit ceiling and is not permitted for buildings receiving credits in connection with tax-exempt bonds. Rules for such designations shall be set forth in the LIHTC-allocating agencies' qualified allocation plans (QAPs).

Explanation of HUD Designation Method

A. 2015 Difficult Development Areas

In developing the list of DDAs, HUD compared housing costs with incomes. HUD used 2010 Census population for metropolitan and nonmetropolitan areas, and the MSA definitions, as published in OMB Bulletin No. 10–02 on December 1, 2009, with modifications, as described below. In keeping with past practice of basing the coming year's DDA designations on data from the preceding year, the basis for these comparisons is the FY2014 HUD income limits for very low-income households (very low-income limits, or VLILs), which are based on 50 percent of AMGI, and metropolitan FMRs based on the Final FY2014 FMRs used for the Housing Choice Voucher (HCV) program.

In formulating the FY2014 FMRs and VLILs, HUD modified the current OMB definitions of MSAs to account for substantial differences in rents among areas within each current MSA that were in different FMR areas under definitions used in prior years. HUD formed these ''HUD Metro FMR Areas'' (HMFAs) in cases where one or more of the parts of newly defined MSAs that previously were in separate FMR areas had 2000 Census based 40th-percentile recent-mover rents that differed, by 5 percent or more, from the same statistic calculated at the MSA level. In addition, a few HMFAs were formed on the basis of very large differences in AMGIs among the MSA parts. All HMFAs are contained entirely within MSAs. All nonmetropolitan counties are outside of MSAs and are not broken up by HUD for purposes of setting FMRs and VLILs. (Complete details on HUD's process for determining FY2014 FMR areas and FMRs are available at *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr14.* Complete details on HUD's process for determining FY2014 income limits are available at *http://www.huduser.org/portal/datasets/il/il14/index.html.*)

HUD's unit of analysis for designating metropolitan DDAs consists of: entire MSAs, in cases where these were not broken up into HMFAs for purposes of computing FMRs and VLILs; and HMFAs within the MSAs that were broken up for such purposes. Hereafter in this notice, the unit of analysis for designating metropolitan DDAs will be called the HMFA, and the unit of analysis for nonmetropolitan DDAs will be the nonmetropolitan county or county equivalent area. The procedure used in making the DDA calculations follows:

1. For each metropolitan HMFA and each nonmetropolitan county, HUD calculated a ratio. HUD used the final FY2014 two-bedroom FMR and the FY2014 four-person VLIL for this calculation.

a. The numerator of the ratio, representing the development cost of housing, was the area's final FY2014 FMR. In general, the FMR is based on the 40th-percentile gross rent paid by recent movers to live in a two-bedroom apartment. In metropolitan areas granted a FMR based on the 50th-percentile rent for purposes of improving the administration of HUD's HCV program (see 78 FR 61668), HUD used the 40th-percentile rent to ensure nationwide consistency of comparisons.

b. The denominator of the ratio, representing the maximum income of eligible tenants, was the monthly LIHTC income-based rent limit, which was calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent-of-AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for HMFAs and for nonmetropolitan counties.

3. The DDAs are those with the highest ratios cumulative to 20 percent of the 2010 population of all metropolitan areas and all nonmetropolitan areas.

Application of Population Caps to DDA Determinations

In identifying DDAs, HUD applied caps, or limitations, as noted above. The cumulative population of metropolitan DDAs cannot exceed 20 percent of the cumulative population of all metropolitan areas, and the cumulative population of nonmetropolitan DDAs cannot exceed 20 percent of the cumulative population of all nonmetropolitan areas.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains those procedures. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio, as described above, was identical (to four decimal places) to the last area selected, and its inclusion resulted in only a minor overrun of the cap. Thus, for both the designated metropolitan and nonmetropolitan DDAs, there may be minimal overruns of the cap. HUD believes the designation of additional areas in the above examples of minimal overruns is consistent with the intent of the IRC. As long as the apparent excess is small due to measurement errors, some latitude is justifiable, because it is impossible to determine whether the 20 percent cap has been exceeded. Despite the care and effort involved in a Decennial Census, the Census Bureau and all users of the data recognize that the population counts for a given area and for the entire country are not precise. Therefore, the extent of the measurement error is unknown. There can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting small variances above the 20 percent limit.

B. Qualified Census Tracts

In developing this list of QCTs, HUD used 2010 Census 100-percent count data on total population, total households, and population in households; the median household income and poverty rate as estimated in the 2006–2010, 2007–2011 and 2008–2012 ACS tabulations; the FY2012, FY2013 and FY2014 Very Low-Income Limits (VLILs) computed at the HUD Metropolitan FMR Area (HMFA) level [1] to determine tract eligibility; and the MSA definitions published in OMB Bulletin No. 10–02 on December 1, 2009, for determining how many

[1] FY2012 HUD income limits for very low-income households (very low-income limits, or VLILs) are based on 50 percent of AMGI. In formulating the FY2012 Fair Market Rents (FMRs) and VLILs, HUD modified the current OMB definitions of MSAs to account for substantial differences in rents among areas within each new MSA that were in different FMR areas under definitions used in prior years. HUD formed these ''HUD Metro FMR Areas'' (HMFAs) in cases where one or more of the parts of newly defined MSAs that previously were in separate FMR areas had 2000 Census based 40th-percentile recent-mover rents that differed, by 5 percent or more, from the same statistic calculated at the MSA level. In addition, a few HMFAs were formed on the basis of very large differences in AMGIs among the MSA parts. All HMFAs are contained entirely within MSAs. All nonmetropolitan counties are outside of MSAs and are not broken up by HUD for purposes of setting FMRs and VLILs. (Complete details on HUD's process for determining FY2012 FMR areas and FMRs are available at *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr12.* Complete details on HUD's process for determining FY2012 income limits are available at *http://www.huduser.org/portal/datasets/il/il12/index.html.*)

eligible tracts can be designated under the statutory 20 percent population cap.

HUD uses the HMFA-level AMGIs to determine QCT eligibility because the statute, specifically IRC Section 42(d)(5)(B)(iv)(II), refers to the same section of the IRC that defines income for purposes of tenant eligibility and unit maximum rent, specifically IRC Section 42(g)(4). By rule, the IRS sets these income limits according to HUD's VLILs, which, starting in FY2006 and thereafter, are established at the HMFA level. Similarly, HUD uses the entire MSA to determine how many eligible tracts can be designated under the 20 percent population cap as required by the statute (IRC Section 42(d)(5)(B)(ii)(III)), which states that MSAs should be treated as singular areas. The QCTs were determined as follows:

1. To be eligible to be designated a QCT, a census tract must have 50 percent of its households with incomes below 60 percent of the AMGI or have a poverty rate of 25 percent or more. Due to potential statistical anomalies in the ACS 5-year estimates, one of these conditions must be met in at least 2 of the 3 evaluation years for a tract to be considered eligible for QCT designation. HUD calculates 60 percent of AMGI by multiplying by a factor of 1.2 the HMFA or nonmetropolitan county VLIL adjusted for inflation to match the ACS estimates. For example, the FY2012 VLILs were adjusted for inflation to 2010 dollars. The FY2013 VLILs were adjusted for inflation to 2011 dollars. The FY2014 VLILs were adjusted for inflation to 2012 dollars.

2. For each census tract, whether or not 50 percent of households have incomes below the 60 percent income standard (income criterion) was determined by: (a) Calculating the average household size of the census tract, (b) applying the income standard after adjusting it to match the average household size, and (c) comparing the average-household-size-adjusted income standard to the median household income for the tract reported in each of the three years of ACS tabulations [2] (2006–2010, 2007–2011 and 2008–2012). Since 50 percent of households in a tract have incomes above and below the tract median household income, if the tract median household income is less than the average-household-size-adjusted income standard for the tract, then more than 50 percent of households have incomes below the standard.

3. For each census tract, the poverty rate was determined in each of the three years of ACS tabulations (2006–2010, 2007–2011 and 2008–2012) by dividing the population with incomes below the poverty line by the population for whom poverty status has been determined [3].

4. QCTs are those census tracts in which 50 percent or more of the households meet the income criterion in at least two of the three years evaluated, or 25 percent or more of the population is in poverty in at least two of the three years evaluated, such that the population of all census tracts that satisfy either one or both of these criteria does not exceed 20 percent of the total population of the respective area.

5. In areas where more than 20 percent of the population resides in eligible census tracts, census tracts are designated as QCTs in accordance with the following procedure:

a. The income and poverty criteria are each averaged over the three years of data (2006–2010, 2007–2011 and 2008–2012) if the values exceed the threshold [4]. Values below the threshold are excluded.

b. Eligible tracts are placed in one of two groups based on the averaged values of the income and poverty criteria. The first group includes tracts that satisfy both the income and poverty criteria for QCTs in the same year for at least two of the three evaluation years. The second group includes tracts that satisfy either the income criterion or the poverty criterion in at least two of three years, but not both. A tract must qualify for at least one of the criteria in at least two of the three evaluation years to be eligible, although it does not need to be the same criterion.

c. Tracts in the first group are ranked from highest to lowest by the average of the ratios of the tract average-household-size-adjusted income limit to the median household income. Then, tracts in the first group are ranked from highest to lowest by the average of the poverty rates. The two ranks are averaged to yield a combined rank. The tracts are then sorted on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In the event of a tie, more populous tracts are ranked above less populous ones.

d. Tracts in the second group are ranked from highest to lowest by the average of the ratios of the tract average-household-size-adjusted income limit to the median household income. Then, tracts in the second group are ranked from highest to lowest by the average of the poverty rates. The two ranks are then averaged to yield a combined rank. The tracts are then sorted on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In the event of a tie, more populous tracts are ranked above less populous ones.

e. The ranked first group is stacked on top of the ranked second group to yield a single, concatenated, ranked list of eligible census tracts.

f. Working down the single, concatenated, ranked list of eligible tracts, census tracts are identified as designated until the designation of an additional tract would cause the 20 percent limit to be exceeded. If a census tract is not designated because doing so would raise the percentage above 20 percent, subsequent census tracts are then considered to determine if one or more census tract(s) with smaller population(s) could be designated without exceeding the 20 percent limit.

C. Exceptions to OMB Definitions of MSAs and Other Geographic Matters

As stated in OMB Bulletin 10–02, defining metropolitan areas:

''OMB establishes and maintains the definitions of Metropolitan . . . Statistical Areas, . . . solely for statistical purposes. . . . OMB does not take into account or attempt to anticipate any non-statistical uses that may be made of the definitions[.] In cases where . . . an agency elects to use the Metropolitan . . . Area definitions in nonstatistical programs, it is the sponsoring agency's responsibility to ensure that the definitions are appropriate for such use. An agency using the statistical definitions in a nonstatistical program may modify the definitions, but only for the purposes of that program. In such cases, any modifications should be clearly identified as deviations from the OMB statistical area definitions in order to avoid confusion with OMB's official definitions of Metropolitan . . . Statistical Areas.''

Following OMB guidance, the estimation procedure for the FY2014 FMRs and income limits incorporates the current OMB definitions of metropolitan areas based on the Core-Based Statistical Area (CBSA) standards,

[2] If the confidence interval around the median household income determined from the margin of error for the estimate as published by Census included $0 in one or more of the ACS tabulations evaluated, HUD determined the tract to be ineligible for evaluation as a QCT under the income criterion due to lack of a reliable income statistic in that ACS tabulation.

[3] If the confidence interval around the estimates of the population for whom poverty status has been determined or the number of persons below poverty included zero persons as determined from the margins of error for the estimates as published by Census in one or more of the ACS tabulations evaluated, HUD determined the tract to be ineligible for evaluation as a QCT under the poverty rate criterion due to lack of reliable poverty statistics in that ACS tabulation.

[4] If a tract exceeded the threshold in only 2 years, only the qualifying two years of data were averaged.

as implemented with 2000 Census data, but makes adjustments to the definitions, in order to separate subparts of these areas in cases where FMRs (and in a few cases, VLILs) would otherwise change significantly if the new area definitions were used without modification. In CBSAs where subareas are established, it is HUD's view that the geographic extent of the housing markets are not yet the same as the geographic extent of the CBSAs, but may approach becoming so as the social and economic integration of the CBSA component areas increases.

The geographic baseline for the FMR and income limit estimation procedure is the CBSA Metropolitan Areas (referred to as Metropolitan Statistical Areas or MSAs) and CBSA Non-Metropolitan Counties (nonmetropolitan counties include the county components of Micropolitan CBSAs where the counties are generally assigned separate FMRs). The HUD-modified CBSA definitions allow for subarea FMRs within MSAs based on the boundaries of ''Old FMR Areas'' (OFAs) within the boundaries of new MSAs. (OFAs are the FMR areas defined for the FY2005 FMRs. Collectively, they include the June 30, 1999, OMB definitions of MSAs and Primary MSAs (old definition MSAs/PMSAs), metropolitan counties deleted from old definition MSAs/PMSAs by HUD for FMR-setting purposes, and counties and county parts outside of old definition MSAs/PMSAs referred to as nonmetropolitan counties). Subareas of MSAs are assigned their own FMRs and Income Limits when the subarea 2000 Census Base FMR differs significantly from the MSA 2000 Census Base FMR (or, in some cases, where the 2000 Census base AMGI differs significantly from the MSA 2000 Census Base AMGI). MSA subareas, and the remaining portions of MSAs after subareas have been determined, are referred to as ''HUD Metro FMR Areas (HMFAs),'' to distinguish such areas from OMB's official definition of MSAs.

In the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), HMFAs are defined according to county subdivisions or minor civil divisions (MCDs), rather than county boundaries. However, since no part of an HMFA is outside an OMB-defined, county-based MSA, all New England nonmetropolitan counties are kept intact for purposes of designating Nonmetropolitan DDAs.

For the convenience of readers of this notice, the geographical definitions of designated Metropolitan DDAs are included in the list of DDAs.

Future Designations

DDAs are designated annually as updated income and FMR data are made public. As previously announced, beginning with the 2016 metropolitan area designations, HUD will use ''Small Area FMRs'' (SAFMRs) defined at the ZIP Code level within metropolitan areas as the measure of ''construction, land, and utility costs relative to area median gross income'' rather than FMRs established for HUD Metropolitan FMR Areas. In general, HUD estimates SAFMRs by multiplying the ratio of ZIP–Code area to metropolitan-area median gross rent by the metropolitan-area FMRs (a complete description of how SAFMRs are estimated is available at: *http://www.huduser.org/portal/datasets/fmr/fmr2013f/FY13_SAFMR_Notice.pdf.*

QCTs are designated periodically as new data become available, or as metropolitan area definitions change. QCTs are being updated at this time to incorporate two additional releases of data since the 2013 QCT designations, which were based on 2006–2010 ACS estimates, were announced. The two subsequent releases of the ACS, the 2007–2011 estimates released in December of 2012, and the 2008–2012 estimates released in December 2013, indicate that the 2006–2010 poverty rate estimates for certain tracts were anomalous and not an accurate reflection of the true poverty rate in the tract. In order to avoid basing QCT designations on a single estimate which may be an anomaly due to sampling error rather than an accurate reflection of local conditions, HUD is adopting the method described in this notice incorporating three years of estimates.

Effective Date

The 2015 lists of DDAs are effective:

(1) For allocations of credit after December 31, 2014; or

(2) for purposes of IRC Section 42(h)(4), if the bonds are issued and the building is placed in service after December 31, 2014.

If an area is not on a subsequent list of DDAs, the 2015 lists are effective for the area if:

(1) The allocation of credit to an applicant is made no later than the end of the 365-day period after the applicant submits a complete application to the LIHTC-allocating agency, and the submission is made before the effective date of the subsequent lists; or

(2) for purposes of IRC Section 42(h)(4), if:

(a) The bonds are issued or the building is placed in service no later than the end of the 365-day period after the applicant submits a complete application to the bond-issuing agency, and

(b) the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete by the credit-allocating or bond-issuing agency. A ''complete application'' means that no more than de minimis clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

In the case of a ''multiphase project,'' the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC. For purposes of IRC Section 42(h)(4), the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the first of the following occurred: (a) The building(s) in the first phase were placed in service, or (b) the bonds were issued.

For purposes of this notice, a ''multiphase project'' is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria:

(1) The multiphase composition of the project (i.e., total number of buildings and phases in project, with a description of how many buildings are to be built in each phase and when each phase is to be completed, and any other information required by the agency) is made known by the applicant in the first application of credit for any building in the project, and that applicant identifies the buildings in the project for which credit is (or will be) sought;

(2) The aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as defined in the Qualified Allocation Plan (QAP) of the LIHTC-allocating agency, or the annual per-capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over 2 or more years; and

(3) All applications for LIHTC for buildings on the site are made in immediately consecutive years.

Members of the public are hereby reminded that the Secretary of Housing

and Urban Development, or the Secretary's designee, has legal authority to designate DDAs and QCTs, by publishing lists of geographic entities as defined by, in the case of DDAs, the Census Bureau, the several states and the governments of the insular areas of the United States and, in the case of QCTs, by the Census Bureau; and to establish the effective dates of such lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with the IRC and associated regulations, including **Federal Register** notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

Interpretive Examples of Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose DDA status. The examples covering DDAs are equally applicable to QCT designations.

(Case A) Project A is located in a 2015 DDA that is NOT a designated DDA in 2016. A complete application for tax credits for Project A is filed with the allocating agency on November 15, 2015. Credits are allocated to Project A on October 30, 2016. Project A is eligible for the increase in basis accorded a project in a 2015 DDA because the application was filed BEFORE January 1, 2016 (the assumed effective date for the 2016 DDA lists), and because tax credits were allocated no later than the end of the 365-day period after the filing of the complete application for an allocation of tax credits.

(Case B) Project B is located in a 2015 DDA that is NOT a designated DDA in 2016 or 2017. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2015. Credits are allocated to Project B on March 30, 2017. Project B is NOT eligible for the increase in basis accorded a project in a 2015 DDA because, although the application for an allocation of tax credits was filed BEFORE January 1, 2016 (the assumed effective date of the 2016 DDA lists), the tax credits were allocated later than the end of the 365-day period after the filing of the complete application.

(Case C) Project C is located in a 2015 DDA that was not a DDA in 2014. Project C was placed in service on November 15, 2014. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2015. The bonds that will support the permanent financing of Project C are issued on September 30, 2015. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2015 DDA, because the project was placed in service BEFORE January 1, 2015.

(Case D) Project D is located in an area that is a DDA in 2015, but is NOT a DDA in 2016. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2015. Bonds are issued for Project D on April 30, 2016, but Project D is not placed in service until January 30, 2017. Project D is eligible for the increase in basis available to projects located in 2015 DDAs because: (1) One of the two events necessary for triggering the effective date for buildings described in Section 42(h)(4)(B) of the IRC (the two events being bonds issued and buildings placed in service) took place on April 30, 2016, within the 365-day period after a complete application for tax-exempt bond financing was filed, (2) the application was filed during a time when the location of Project D was in a DDA, and (3) both the issuance of the bonds and placement in service of Project D occurred after the application was submitted.

(Case E) Project E is a multiphase project located in a 2015 DDA that is not a designated DDA in 2016. The first phase of Project E received an allocation of credits in 2015, pursuant to an application filed March 15, 2015, which describes the multiphase composition of the project. An application for tax credits for the second phase Project E is filed with the allocating agency by the same entity on March 15, 2016. The second phase of Project E is located on a contiguous site. Credits are allocated to the second phase of Project E on October 30, 2016. The aggregate amount of credits allocated to the two phases of Project E exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP and is the reason that applications were made in multiple phases. The second phase of Project E is, therefore, eligible for the increase in basis accorded a project in a 2015 DDA, because it meets all of the conditions to be a part of a multiphase project.

(Case F) Project F is a multiphase project located in a 2015 DDA that is NOT a designated DDA in 2016. The first phase of Project F received an allocation of credits in 2015, pursuant to an application filed March 15, 2015, which does not describe the multiphase composition of the project. An application for tax credits for the second phase of Project F is filed with the allocating agency by the same entity on March 15, 2017. Credits are allocated to the second phase of Project F on October 30, 2017. The aggregate amount of credits allocated to the two phases of Project F exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP. The second phase of Project F is, therefore, not eligible for the increase in basis accorded a project in a 2015 DDA, since it does not meet all of the conditions for a multiphase project, as defined in this notice. The original application for credits for the first phase did not describe the multiphase composition of the project. Also, the application for credits for the second phase of Project F was not made in the year immediately following the first phase application year.

Findings and Certifications

Environmental Impact

This notice involves the establishment of fiscal requirements or procedures that are related to rate and cost determinations and do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(6) of HUD's regulations, this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any policy document that has federalism implications if the document either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This notice merely designates DDAs as required under IRC Section 42, as amended, for the use by political subdivisions of the states in allocating the LIHTC. This notice also details the technical method used in making such designations. As a result, this notice is not subject to review under the order.

Dated: September 29, 2014.

Kathy M. O'Regan,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2014–23684 Filed 10–2–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2014–N204; FXES11130100000–145–FF01E00000]

Endangered Species; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for recovery permits to conduct activities with the purpose of enhancing the survival of endangered species. The Endangered Species Act of 1973, as amended (Act), prohibits certain activities with endangered species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing such permits.

DATES: To ensure consideration, please send your written comments by November 3, 2014.

ADDRESSES: Program Manager for Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE. 11th Avenue, Portland, OR 97232–4181. Please refer to the permit number for the application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Fish and Wildlife Biologist, at the above address, or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with respect to endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for certain permits, and requires that we invite public comment before issuing these permits for endangered species.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittee to conduct activities (including take or interstate commerce) with respect to U.S. endangered or threatened species for scientific purposes or enhancement of propagation or survival. Our regulations implementing section 10(a)(1)(A) of the Act for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Application Available for Review and Comment

We invite local, State, and Federal agencies and the public to comment on the following applications. Please refer to the permit number for the application when submitting comments.

Documents and other information submitted with these applications are available for review by request from the Program Manager for Restoration and Endangered Species Classification at the address listed in the **ADDRESSES** section of this notice, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

Permit Number: TE–45531B

Applicant: State of Hawaii, Division of Forestry and Wildlife, Honolulu, Hawaii.

The applicant requests a new permit to take (collect eggs, captive propagate, and release) the Kauai akialoa (*Hemignathus procerus*), Kauai ‘o‘o (*Moho braccatus*), large Kauai thrush (*Myadestes myadestinus*), Maui akepa (*Loxops coccineus ochraceus*), Molokai creeper (*Paroreomyza flammea*), Molokai thrush (*Myadestes lanaiensis rutha*), nukupu‘u (*Hemignathus lucidus*), ‘o‘u (*Psittirostra psittacea*), Oahu creeper (*Paroreomyza maculata*), palila (*Loxioides bailleui*), and small Kauai thrush (*Myadestes palmeri*); to take (collect eggs, capture adults, captive propagate, and release) the Hawaiian crow or ‘alala (*Corvus hawaiiensis*), Maui parrotbill (*Pseudonestor xanthophrys*), and po‘ouli (*Melamprosops phaeosoma*); and to take (collect eggs, capture nestlings and adults, captive propagate, and release) the akekee (*Loxops caeruleirostris*) and akikiki (*Oreomystis bairdi*) throughout their ranges in Hawaii, in conjunction with captive breeding and population management activities, for the purpose of enhancing the species' survival.

Permit Number: TE–798744

Applicant: Kootenai Tribe of Idaho, Bonners Ferry, Idaho.

The applicant requests a permit renewal to take (capture, collect, measure, mark, attach radio or sonic transmitters, collect biological samples, captive propagate, and release) the Kootenai River population of the white sturgeon (*Acipenser transmontanus*) in conjunction with captive propagation and scientific research in Idaho and Montana for the purpose of enhancing the species' survival.

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: September 23, 2014.

Hugh Morrison,

Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2014–23384 Filed 10–2–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK930000.L13100000.EI0000.241A]

Notice of National Petroleum Reserve-Alaska Oil and Gas Lease Sale 2014 and the Availability of the Detailed Statement of Sale for Oil and Gas Lease Sale 2014 in the National Petroleum Reserve-Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) Alaska State Office will hold an oil and gas lease sale bid opening for tracts in the National Petroleum Reserve-Alaska. The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid.

DATES: The oil and gas lease sale bid opening will be held at 1 p.m. on Wednesday, November 19, 2014. Sealed

bids must be received by 4 p.m., Monday, November 17, 2014.

ADDRESSES: The oil and gas lease sale bids will be opened at the Anchorage Federal Building, Denali Room (fourth floor), 222 W. 7th Ave., Anchorage, AK. Sealed bids must be sent to Carol Taylor (AK932), BLM-Alaska State Office; 222 West 7th Avenue, #13; Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: Wayne Svejnoha, 907–271–4407.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: All bids must be submitted by sealed bid in accordance with the provisions identified in the Detailed Statement of Sale. The Detailed Statement of Sale for the National Petroleum Reserve-Alaska Oil and Gas Lease Sale 2014 will be available to the public immediately after publication of this Notice in the **Federal Register**. The Detailed Statement of Sale may be obtained from the BLM-Alaska Web site at *www.blm.gov/ak,* or by request from the Public Information Center, BLM-Alaska State Office; 222 West 7th Ave., #13; Anchorage, AK 99513–7504; telephone 907–271–5960. The Detailed Statement of Sale will include a description of the areas to be offered for lease, lease terms, conditions, special stipulations, required operating procedures, and how and where to submit bids.

Authority: 43 CFR 3131.4–1.

Ted A. Murphy,

Associate State Director.

[FR Doc. 2014–23607 Filed 10–2–14; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SER–BICY–16532; PPSEBICY00, PPMPSPD1Z.YM0000]

Cancellation of October 7, 2014, Meeting of the Big Cypress National Preserve Off-Road Vehicle Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Cancellation of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16), notice is hereby given that the October 7, 2014, meeting of the Big Cypress National Preserve Off-Road Vehicle Advisory Committee previously announced in the **Federal Register**, Vol. 79, March 12, 2014, p. 14080, is cancelled.

FOR FURTHER INFORMATION CONTACT: Pedro Ramos, Superintendent, Big Cypress National Preserve, 33100 Tamiami Trail East, Ochopee, Florida 34141–1000, (239) 695–1103.

SUPPLEMENTARY INFORMATION: The Committee was established (**Federal Register**, August 1, 2007, pp. 42108–42109) pursuant to the Preserve's 2000 *Recreational Off-Road Vehicle Management Plan* and the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16) to examine issues and make recommendations regarding the management of off-road vehicles in the Preserve.

Dated: September 29, 2014.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2014–23651 Filed 10–2–14; 8:45 am]

BILLING CODE 4310–EE–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–14–032]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 9, 2014 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none
2. Minutes
3. Ratification List
4. Vote in Inv. Nos. 701–TA–501 and 731–TA–1226 (Final)(Chlorinated Isocyanurates from China and Japan). The Commission is currently scheduled to complete and file its determinations and views of the Commission on October 21, 2014.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: September 30, 2014.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2014–23721 Filed 10–1–14; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–14–033]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission

TIME AND DATE: October 10, 2014 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none
2. Minutes
3. Ratification List
4. Vote in Inv. Nos. 701–TA–523 and 731–TA–1259 (Preliminary)(Boltless Steel Shelving Units Prepackaged for Sale from China). The Commission is currently scheduled to complete and file its determinations on October 10, 2014; views of the Commission are currently scheduled to be completed and filed on October 20, 2014.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: September 30, 2014.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2014–23761 Filed 10–1–14; 4:15 pm]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Invitation for Membership on Advisory Committee

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Request for applications.

SUMMARY: The Joint Board for the Enrollment of Actuaries (Joint Board), established under the Employee Retirement Income Security Act of 1974 (ERISA), is responsible for the

enrollment of individuals who wish to perform actuarial services under ERISA. To assist in its examination duties mandated by ERISA, the Joint Board has established the Advisory Committee on Actuarial Examinations (Advisory Committee) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The current Advisory Committee members' terms expire on February 28, 2015. This notice describes the Advisory Committee and invites applications from those interested in serving on the Advisory Committee for the March 1, 2015–February 28, 2017, term.

DATES: Applications for membership on the Advisory Committee must be received by the Executive Director of the Joint Board, by no later than December 5, 2014.

ADDRESSES: Mail or deliver applications to: Patrick W. McDonough; Executive Director, Joint Board for the Enrollment of Actuaries; Return Preparer Office SE:RPO; Internal Revenue Service; 1111 Constitution Avenue NW.; REFM, Park 4, Floor 4; Washington, DC 20224. Send applications electronically to: *Patrick.Mcdonough@irs.gov.*

See **SUPPLEMENTARY INFORMATION** for application requirements.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director, at (703) 414–2173.

SUPPLEMENTARY INFORMATION:

1. Background

To qualify for enrollment to perform actuarial services under ERISA, an applicant must satisfy certain experience and knowledge requirements, which are set forth in the Joint Board's regulations. An applicant may satisfy the knowledge requirement by successful completion of Joint Board examinations in basic actuarial mathematics and methodology and in actuarial mathematics and methodology relating to pension plans qualifying under ERISA.

The Joint Board, the Society of Actuaries, and the American Society of Pension Professionals & Actuaries jointly offer examinations acceptable to the Joint Board for enrollment purposes and acceptable to the other two actuarial organizations as part of their respective examination programs

2. Scope of Advisory Committee Duties

The Advisory Committee plays an integral role in the examination program by assisting the Joint Board in offering examinations that enable examination candidates to demonstrate the knowledge necessary to qualify for enrollment. The Advisory Committee's duties, which are strictly advisory, include (1) recommending topics for inclusion on the Joint Board examinations, (2) reviewing and drafting examination questions, (3) recommending examinations, (4) reviewing examination results and recommending passing scores, and (5) providing other recommendations and advice relative to the examinations, as requested by the Joint Board.

3. Member Terms and Responsibilities

Members are appointed for a 2-year term. The upcoming term will begin on March 1, 2015, and end on February 28, 2017. Members may seek reappointment for additional consecutive terms.

Members are expected to attend approximately 4 meetings each calendar year and are reimbursed for travel expenses in accordance with applicable government regulations. In general, members are expected to devote 125 to 175 hours, including meeting time, to the work of the Advisory Committee over the course of a year.

4. Member Selection

The Joint Board seeks to appoint an Advisory Committee that is fairly balanced in terms of points of view represented and functions to be performed. Every effort is made to ensure that most points of view extant in the enrolled actuary profession are represented on the Advisory Committee. To that end, the Joint Board seeks to appoint several members from each of the main practice areas of the enrolled actuary profession, including small employer plans, large employer plans, and multiemployer plans. In addition, to ensure diversity of points of view, the Joint Board limits the number of members affiliated with any one actuarial organization or employed with any one firm.

Membership normally will be limited to actuaries currently enrolled by the Joint Board. However, individuals having academic or other special qualifications of particular value for the Advisory Committee's work also will be considered for membership. Federally-registered lobbyists and individuals affiliated with Joint Board enrollment examination preparation courses are not eligible to serve on the Advisory Committee.

5. Member Designation

Advisory Committee members are appointed as Special Government Employees (SGEs). As such, members are subject to certain ethical standards applicable to SGEs. Upon appointment, each member will be required to provide written confirmation that he/she does not have a financial interest in a Joint Board examination preparation course. In addition, each member will be required to attend annual ethics training.

6. Application Requirements

To receive consideration, an individual interested in serving on the Advisory Committee must submit (1) a signed, cover letter expressing interest in serving on the Advisory Committee and describing his/her professional qualifications, and (2) a resume and/or curriculum vitae. Applications may be submitted by regular mail, overnight and express delivery services, and email. In all cases, the cover letter must contain an original signature. Applications must be received by December 5, 2014.

Dated: September 26, 2014.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2014–23565 Filed 10–2–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0043]

TÜV SÜD America, Inc.; Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of TÜV SÜD America, Inc. for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the Agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before October 20, 2014.

ADDRESSES: Submit comments by any of the following methods:

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

2. *Facsimile:* If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

3. *Regular or express mail, hand delivery, or messenger (courier) service:* Submit comments, requests, and any attachments to the OSHA Docket Office, Docket No. OSHA–2007–0043, Technical Data Center, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210; telephone: (202) 693–2350 (TTY number: (877) 889–5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m.–4:45 p.m., e.t.

4. *Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA–2007–0043). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

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

6. *Extension of comment period:* Submit requests for an extension of the comment period on or before October 20, 2014 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

The Occupational Safety and Health Administration is providing notice that TÜV SÜD America, Inc. (TUVAM), is applying for expansion of its current recognition as an NRTL. TUVAM requests the addition of one test standard to its NRTL scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by its applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL, including TUVAM, which details the NRTL's scope of recognition. These pages are available from the OSHA Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

TUVAM currently has three facilities (sites) recognized by OSHA for product testing and certification, with its headquarters located at: TÜV SÜD America, Inc., 10 Centennial Drive, Peabody, Massachusetts 01960. A complete list of TUVAM's scope of recognition is available at *http://www.osha.gov/dts/otpca/nrtl/tuvam.html.*

II. General Background on the Application

TUVAM submitted an application, dated June 9, 2014 (Exhibit 14–1—TUVAM Request for Expansion), to expand its recognition to include one additional test standard. OSHA staff performed a comparability analysis and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1 below lists the appropriate test standards found in TUVAM's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARD FOR INCLUSION IN TUVAM'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
AAMI ES60601–1	Medical electrical equipment—Part 1: General requirements for basic safety and essential performance.

III. Preliminary Findings on the Application

TUVAM submitted an acceptable application for expansion of its scope of recognition. OSHA's review of the application file, and the comparability analysis, indicate that TUVAM can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of this one test standard for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of TUVAM's application.

OSHA welcomes public comment as to whether TUVAM meets the requirements of 29 CFR 1910.7 for expansion of its recognition as an NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the request is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. These materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2007–0043.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will recommend to the Assistant Secretary for Occupational Safety and Health whether to grant TUVAM's application for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of its final decision in the **Federal Register**.

IV. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on September 29, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–23606 Filed 10–2–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2014–0007]

Advisory Committee on Construction Safety and Health (ACCSH); Notice of Intent To Renew the Charter

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of intent to renew the ACCSH Charter.

SUMMARY: The Secretary of Labor intends to renew the Charter of the Advisory Committee on Construction Safety and Health. The current ACCSH Charter will expire on November 26, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Damon S. Bonneau, Office of Construction Services, Directorate of Construction, Occupational Safety and Health Administration, Room N–3468, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2020 (TTY (877) 889–5627); email *bonneau.damon@dol.gov.*

SUPPLEMENTARY INFORMATION: ACCSH is a continuing advisory committee established under Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act (CSA)) (40 U.S.C. 3704(d)(4)), to advise the Secretary and the Assistant Secretary of Labor for Occupational Safety and Health in the formulation of construction safety and health standards as well as on policy matters arising under the CSA and the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*).

In accordance with the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2 § 14(b)(2)), and its implementing regulations (41 CFR part 102–3 et seq.), the ACCSH Charter must be renewed every two years. The current ACCSH Charter will expire on November 26, 2014. The new Charter includes minor updates to reflect increases in the full-time employees required to support the Committee (1.5 to 1.8) and minor updates to better describe the management of the Committee's records.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3704), the Federal Advisory Committee Act (5 U.S.C. App. 2), 29 CFR part 1912, 41 CFR part 102–3, and Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

Signed at Washington, DC, on September 29, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–23603 Filed 10–2–14; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 14–098]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Wednesday, October 29, 2014, 1:00 p.m. to 2:30 p.m., Local Time.

ADDRESSES: NASA Marshall Space Flight Center, Building 4220, Room 1103, Huntsville, Alabama 35812.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Aerospace Safety Advisory Panel Administrative Officer, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452 or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel (ASAP) will hold its Fourth Quarterly Meeting for 2014. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The agenda will include:

Updates on the Exploration Systems Development
Updates on the Commercial Crew Program
Updates on the International Space Station Program
Overview of the Asteroid Redirect Mission

The meeting will be open to the public up to the seating capacity of the room. Seating will be on a first-come basis. This meeting is also available telephonically. Any interested person may call the USA toll free conference call number (800) 857–7040; pass code 6749544. Attendees will be required to sign a visitor's register. All U.S. citizens desiring to attend the Aerospace Safety Advisory Panel meeting at the Marshall Space Flight Center must provide their full name, company affiliation (if applicable), driver's license number and state, citizenship, place of birth, and date of birth to the Marshall Space Flight Center Protective Services Office no later than close of business on October 24, 2014.

All non-U.S. citizens must submit their name; current address; driver's license number and state (if applicable); citizenship; company affiliation (if applicable) to include address, telephone number, and title; place of birth; date of birth; U.S. visa information to include type, number, and expiration date; U.S. Social Security number (if applicable); Permanent Resident card (green card) number and expiration date (if applicable); place and date of entry into the U.S.; and passport information to include country of issue, number, and expiration date to the Marshall Space Flight Center Security Office no later than close of business on October 22, 2014. If the above information is not received by the noted dates, attendees should expect a minimum delay of two (2) hours.

Please provide the appropriate data, via fax at (256) 544–2101, noting at the top of the page ''Public Admission to the ASAP Meeting at MSFC.'' For security questions, please call Becky Hopson at (256) 544–4541. All visitors to this meeting will be required to process in through the Redstone/Marshall Space Flight Center Joint Visitor Control Center located on Rideout Road, north of Gate 9, prior to entering Marshall Space Flight Center.

At the beginning of the meeting, members of the public may make a 5-minute verbal presentation to the Panel on the subject of safety in NASA. To do so, please contact Ms. Marian Norris at *mnorris@nasa.gov* at least 48 hours in advance. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentations and written comments should be limited to the subject of safety in NASA. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2014–23622 Filed 10–2–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Meeting of the Advisory Committee for Social, Behavioral and Economic Sciences

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Social, Behavioral and Economic Sciences (#1171).

Date/Time: October 30, 2014; 8:30 a.m. to 5 p.m., October 31, 2014; 9 a.m. to 12:15 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Stafford I, Room 1235, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Deborah Olster, Office of the Assistant Director, Directorate for Social, Behavioral and Economic Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 905, Arlington, Virginia 22230; Telephone 703–292–8700.

Summary of Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to Social, Behavioral and Economic Sciences Directorate (SBE) programs and activities.

Agenda:

Thursday, October 30, 2014 8:30 a.m.–5:00 p.m.

- Directorate Update: Dr. Fay Lomax Cook.
- Joint Meeting of SBE Advisory Committee (AC) and NSF Advisory Committee for Cyberinfrastructure.
- Reproducibility and Data Sharing.
- Privacy and Confidentiality.
- Report from SBE AC Subcommittee on Replicability in Science.
- Report from SBE AC Subcommittee on Advancing SBE Survey Research.
- Directions for SBE Science in the 21th Century: Beyond the Mosaic.
- Meeting with NSF Leadership.

Friday, October 31, 2014; 9 a.m.–12:15 p.m.

- National Center for Science and Engineering Statistics.
- Understanding the Brain.
- Agenda and Dates for Future Meetings, Assignments and Concluding Remarks.

Dated: September 30, 2014.

Suzanne Plimpton,

Acting, Committee Management Officer.

[FR Doc. 2014–23590 Filed 10–2–14; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Meeting of the Advisory Committee for Education and Human Resources

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Education and Human Resources (#1119).

Date/Time: November 5, 2014; 8:30 a.m.–5 p.m.; November 6, 2014; 8:30 a.m.–2:30p.m.

Place: NSF Headquarters, Room 375, 4201 Wilson Boulevard, Arlington, VA 22230.

Operated assisted teleconference is available for this meeting. Call 800–857–3133 with password EHR AC and you will be connected to the audio portion of the meeting.

To attend the meeting in person, all visitors must contact the Directorate for Education and Human Resources (*ehr_ac@nsf.gov*) at least 24 hours prior to the teleconference to arrange for a visitor's badge. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the teleconference to receive a visitor's badge.

Meeting materials and minutes will also be available on the EHR Advisory Committee Web site at *http://www.nsf.gov/ehr/advisory.jsp.*

Type of Meeting: Open, teleconference.

Contact Person: Teresa Caravelli, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–8600; *ehr_ac@nsf.gov.*

Purpose of Meeting: To provide advice with respect to the Foundation's science, technology, engineering, and mathematics (STEM) education and human resources programming.

Agenda

Wednesday, November 5, 2014 8:30 a.m.–5 p.m.:

- Introduction by Joan Ferrini-Mundy, Assistant Director for Education and Human Resources.
- Program discussions on implementing the report *''Strategic Re-Envisioning for the Education and Human Resources Directorate''.*
- Panel and Discussion on New Directions in Assessment Metrics.
- Business from NSF Advisory Committees and Directorates.

Thursday, November 6, 2014 8:30 a.m.–2:30 p.m.:

- Panel and Discussion on Models and Theories for Big Data Use in Educations Research.
- Welcome from Dr. France Córdova, NSF Director.
- Plenary Session Discussion on Replication and Reproducibility of Science Findings in STEM Education.
- Recognition, Closing Remarks, and Wrap Up.

Dated: September 30, 2014.

Suzanne Plimpton,

Acting, Committee Management Officer.

[FR Doc. 2014–23591 Filed 10–2–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2013–0088]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 95, Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.

2. *Current OMB approval number:* 3150–0047.

3. *How often the collection is required:* On Occasion.

4. *Who is required or asked to report:* NRC-regulated facilities and their contractors who require access to, and possession of, NRC classified information.

5. *The number of annual respondents:* 110.

6. *The number of hours needed annually to complete the requirement or request:* 984.7 (832.7 reporting hours + 152 recordkeeping hours).

7. *Abstract:* NRC-regulated facilities and their contractors who are authorized to possess classified matter are required to provide information and maintain records to ensure that an adequate level of protection is provided to NRC classified information and material. This clearance is being revised to add a voluntary form (NRC Form 450F) for fulfilling reporting requirements under § 95.17 of Title 10 of the *Code of Federal Regulations.*

Submit, by December 2, 2014, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine, and have copied for a fee, publicly-available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2013–0088. You may submit your comments by any of the following methods: Electronic comments: go to *http://www.regulations.gov* and search for Docket No. NRC–2013–0088; or mail comments to the NRC's Clearance Officer, Tremaine Donnell (T–5 F42), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Questions about the information collection requirements may be directed to the NRC's Clearance Officer, Tremaine Donnell (T–5 F42), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6258, or by email to *http://www.INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 29th day of September 2014.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–23598 Filed 10–2–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341; ASLBP No. 14–933–01–LR–BD01]

DTE Electric Company (Fermi Nuclear Power Plant, Unit 2); Notice of Atomic Safety and Licensing Board Reconstitution

Pursuant to 10 CFR 2.313(c) and 2.321(b), the Atomic Safety and Licensing Board (Board) in the above-captioned *Fermi Nuclear Power Plant, Unit 2* license renewal proceeding is hereby reconstituted by appointing Administrative Judge Gary S. Arnold to serve on the Board in place of Administrative Judge Paul B. Abramson.

All correspondence, documents, and other materials shall continue to be filed in accordance with the NRC E-Filing rule. *See* 10 CFR. 2.302 *et seq.*

Issued at Rockville, Maryland this 29th day of September 2014.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2014–23667 Filed 10–2–14; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MT2013–1; Order No. 2198]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning a request for extension and expansion of

Metro Post market test. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 9, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

On September 19, 2014, the Postal Service filed a request, pursuant to 39 U.S.C. 3641(d)(2) and Order No. 1539, to extend the duration of the Metro Post market test for an additional year and to expand the test to additional markets across the nation during this additional year.[1] The Metro Post market test is currently set to expire on December 16, 2014. Request at 1. Metro Post is currently being tested in the San Francisco and New York City metropolitan areas. *Id.*

The Postal Service intends to expand the Metro Post market test to a number of additional markets over the next year so that it can examine the market for same-day delivery in a wider range of metropolitan areas. *Id.* The Postal Service explains that it is necessary to test a variety of metropolitan areas to determine the operational feasibility and desirability of making Metro Post a permanent product. *Id.* at 1–2.

Accordingly, the Postal Service requests to extend the Metro Post market test for one additional year, until December 16, 2015, and to expand the test into other metropolitan areas over the coming year. *Id.* at 2. The Postal Service asserts that all other aspects of the Metro Post market test remains unchanged, and in compliance with 39 U.S.C. 3641 and Commission Order No. 1539. *Id.*

II. Notice of Filing

The Commission reopens Docket No. MT2013–1 to consider matters raised by the Postal Service's Request. Interested persons may submit comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3641. Comments are due no later than October 9, 2014. The filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Elisabeth S. Shellan to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. MT2013–1 to consider matters raised by the Postal Service's Request.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Elisabeth S. Shellan to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than October 9, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2014–23615 Filed 10–2–14; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

The RRB uses a Personal Identification Number (PIN)/Password system that allows RRB customers to conduct business with the agency electronically. As part of the system, the RRB collects information needed to establish a unique PIN/Password that allows customer access to RRB Internet-based services. The information collected is matched against records of the railroad employee that are maintained by the RRB. If the information is verified, the request is approved and the RRB mails a Password Request Code (PRC) to the requestor. If the information provided cannot be verified, the requestor is advised to contact the nearest field office of the RRB to resolve the discrepancy. Once a PRC is obtained from the RRB, the requestor can apply for a PIN/Password online. Once the PIN/Password has been established, the requestor has access to RRB Internet-based services.

Completion is voluntary, however, the RRB will be unable to provide a PRC or allow a requestor to establish a PIN/Password (thereby denying system access), if the requests are not completed.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (79 FR 41604 on July 16, 2014) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Request for Internet Services.

OMB Control Number: 3220–0198.

Form(s) submitted: N/A.

Type of request: Extension of a currently approved collection.

Affected public: Individuals or Households.

Abstract: The Railroad Retirement Board collects information needed to provide customers with the ability to request a Password Request Code and subsequently, to establish an individual PIN/Password, the initial steps in providing the option of conducting transactions with the RRB on a routine basis through the Internet.

Changes proposed: The RRB proposes no changes to the PRC and PIN/Password screens.

The burden estimate for the ICR is as follows:

[1] Request of the United States Postal Service for Extension and Expansion of Metro Post Market Test, September 19, 2014 (Request). See also Order No. 1539, Order Approving Metro Post Market Test, November 14, 2012.

Form number	Annual responses	Time (minutes)	Burden (hours)
PRC	12,500	5.0	1,042
Pin/Password	20,000	1.5	500
Total	32,500		1,542

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.*

Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Charles.Mierzwa@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, *Email address: OIRA_Submission@omb.eop.gov.*

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2014–23589 Filed 10–2–14; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 498, SEC File No. 270–574, OMB Control No. 3235–0648.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (''the Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 498 (17 CFR 230.498) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act'') permits open-end management investment companies (''funds'') to satisfy their prospectus delivery obligations under the Securities Act by sending or giving key information directly to investors in the form of a summary prospectus (''Summary Prospectus'') and providing the statutory prospectus on a Web site. Upon an investor's request, funds are also required to send the statutory prospectus to the investor. In addition, under rule 498, a fund that relies on the rule to meet its statutory prospectus delivery obligations must make available, free of charge, the fund's current Summary Prospectus, statutory prospectus, statement of additional information, and most recent annual and semi-annual reports to shareholders at the Web site address specified in the required Summary Prospectus legend.[1] A Summary Prospectus that complies with rule 498 is deemed to be a prospectus that is authorized under Section 10(b) of the Securities Act and Section 24(g) of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

The purpose of rule 498 is to enable a fund to provide investors with a Summary Prospectus containing key information necessary to evaluate an investment in the fund. Unlike many other federal information collections, which are primarily for the use and benefit of the collecting agency, this information collection is primarily for the use and benefit of investors. The information filed with the Commission also permits the verification of compliance with securities law requirements and assures the public availability and dissemination of the information.

Based on an analysis of fund filings, the Commission estimates that approximately 9,082 portfolios are using a Summary Prospectus. The Commission estimates that the annual hourly burden per portfolio associated with the compilation of the information required on the cover page or the beginning of the Summary Prospectus is 0.5 hours, and estimates that the annual hourly burden per portfolio to comply with the Web site posting requirement is approximately 1 hour, requiring a total of 1.5 hours per portfolio per year.[2] Thus the total annual hour burden associated with these requirements of the rule is approximately 13,623.[3] The Commission estimates that the annual cost burden is approximately $15,900 per portfolio, for a total annual cost burden of approximately $144,403,800.[4]

Estimates of the average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Under rule 498, use of the Summary Prospectus is voluntary, but the rule's requirements regarding provision of the statutory prospectus upon investor request are mandatory for funds that elect to send or give a Summary Prospectus in reliance upon rule 498. The information provided under rule 498 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site: *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 29, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23574 Filed 10–2–14; 8:45 am]

BILLING CODE 8011–01–P

[1] 17 CFR 270.498(e)(1).

[2] 0.5 hours per portfolio + 1 hour per portfolio = 1.5 hours per portfolio. The Commission believes that funds that have opted to use the Summary Prospectus have already incurred the estimated one-time hour burden to initially comply with rule 498, and therefore the estimated burden hours to initially comply with rule 498 and the associated costs are not included in these estimates.

[3] 1.5 hours per portfolio × 9,082 portfolios = 13,623 hours.

[4] $15,900 per portfolio × 9,082 portfolios = $144,403,800.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 30b2–1; SEC File No. 270–213, OMB Control No. 3235–0220.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 30b2–1 (17 CFR 270.30b2–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Investment Company Act'') requires a registered management investment company (''fund'') to (1) file a report with the Commission on Form N–CSR (17 CFR 249.331 and 274.128) not later than 10 days after the transmission of any report required to be transmitted to shareholders under rule 30e–1 under the Investment Company Act, and (2) file with the Commission a copy of every periodic or interim report or similar communication containing financial statements that is transmitted by or on behalf of such fund to any class of such fund's security holders and that is not required to be filed with the Commission under (1), not later than 10 days after the transmission to security holders. The purpose of the collection of information required by rule 30b2–1 is to meet the disclosure requirements of the Investment Company Act and certification requirements of the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204, 116 Stat. 745 (2002)) and to provide investors with information necessary to evaluate an interest in the fund.

The Commission estimates that there are 2,430 funds, with a total of approximately 11,080 portfolios, that are governed by the rule. For purposes of this analysis, the burden associated with the requirements of rule 30b2–1 has been included in the collection of information requirements of rule 30e–1 and Form N–CSR, rather than the rule. The Commission has, however, requested a one hour burden for administrative purposes.

The collection of information under rule 30b2–1 is mandatory. The information provided under rule 30b2–1 is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 29, 2014.

Kevin M. O'Neill.

Deputy Secretary.

[FR Doc. 2014–23572 Filed 10–2–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 17f–2(d); SEC File No. 270–36, OMB Control No. 3235–0028.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17f–2(d) (17 CFR 240.17f–2(d)) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Act'').

Rule 17f–2(d) requires that records created pursuant to the fingerprinting requirements of Section 17(f)(2) of the Act be maintained and preserved by every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency (''covered entities'' or ''respondents''); permits, under certain circumstances, the records required to be maintained and preserved by a member of a national securities exchange, broker, or dealer to be maintained and preserved by a self-regulatory organization that is also the designated examining authority for that member, broker or dealer; and permits the required records to be preserved on microfilm. The general purpose of Rule 17f–2 is to: (i) Identify security risk personnel; (ii) provide criminal record information so that employers can make fully informed employment decisions; and (iii) deter persons with criminal records from seeking employment or association with covered entities. The rule enables the Commission or other examining authority to ascertain whether all covered persons are being fingerprinted and whether proper procedures regarding fingerprinting are being followed. Retention of these records for a period of not less than three years after termination of a covered person's employment or relationship with a covered entity ensures that law enforcement officials will have easy access to fingerprint cards on a timely basis. This in turn acts as an effective deterrent to employee misconduct.

Approximately 5,300 respondents are subject to the recordkeeping requirements of the rule. Each respondent maintains approximately 60 new records per year, each of which takes approximately 2 minutes to maintain, for an annual burden of approximately 2 hours per respondent (60 records times 2 minutes). The total annual burden for all respondents is approximately 10,600 hours (5,300 respondents times 2 hours). As noted above, all records maintained subject to the rule must be retained for a period of not less than three years after termination of a covered person's employment or relationship with a covered entity. In addition, we estimate the total cost to respondents is approximately $119,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information

Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or be sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 29, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23571 Filed 10–2–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Form N–54A, SEC File No. 270–182, OMB Control No. 3235–0237.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Investment Company Act''), certain investment companies can elect to be regulated as business development companies, as defined in Section 2(a)(48) of the Investment Company Act (15 U.S.C. 80a–2(a)(48)). Under Section 54(a) of the Investment Company Act (15 U.S.C. 80a–53(a)), any company defined in Section 2(a)(48)(A) and (B) may elect to be subject to the provisions of Sections 55 through 65 of the Investment Company Act (15 U.S.C. 80a–54 to 80a–64) by filing with the Commission a notification of election, if such company has: (1) A class of equity securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''); or (2) filed a registration statement pursuant to Section 12 of the Exchange Act for a class of equity securities. The Commission has adopted Form N–54A (17 CFR 274.53) as the form for notification of election to be regulated as business development companies.

The purpose of Form N–54A is to notify the Commission that the investment company making the notification elects to be subject to Sections 55 through 65 of the Investment Company Act, enabling the Commission to administer those provisions of the Investment Company Act to such companies.

The Commission estimates that on average approximately 14 business development companies file these notifications each year. Each of those business development companies need only make a single filing of Form N–54A. The Commission further estimates that this information collection imposes a burden of 0.5 hours, resulting in a total annual PRA burden of 7 hours. Based on the estimated wage rate, the total cost to the business development company industry of the hour burden for complying with Form N–54A would be approximately $2,338.

The collection of information under Form N–54A is mandatory. The information provided by the form is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 29, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23576 Filed 10–2–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 34b–1, SEC File No. 270–305, OMB Control No. 3235–0346.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 34b–1 under the Investment Company Act (17 CFR 270.34b–1) governs sales material that accompanies or follows the delivery of a statutory prospectus (''sales literature''). Rule 34b–1 deems to be materially misleading any investment company (''fund'') sales literature required to be filed with the Securities and Exchange Commission (''Commission'') by Section 24(b) of the Investment Company Act (15 U.S.C. 80a–24(b)) that includes performance data, unless the sales literature also includes the appropriate uniformly computed data and the legend disclosure required in investment company advertisements by rule 482 under the Securities Act of 1933 (17 CFR 230.482). Requiring the inclusion of such standardized performance data in sales literature is designed to prevent misleading performance claims by funds and to enable investors to make meaningful comparisons among funds.

The Commission estimates that on average approximately 130 respondents file 13,685 [1] responses that include the information required by rule 34b–1 each year. The burden resulting from the collection of information requirements of rule 34b–1 is estimated to be 2 hours per response. The total annual burden hours for rule 34b–1 is approximately 27,370 hours per year in the aggregate.[2]

The collection of information under rule 34b–1 is mandatory. The information provided under rule 34b–1 is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to:

[1] The estimated number of responses to rule 34b–1 is composed of 13,378 responses filed with FINRA and 307 responses filed with the Commission in 2013.

[2] 13,685 responses × 2 hours per response = 27,370.

Shagufta_Ahmed@omb.eop.gov; and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 29, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23573 Filed 10–2–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Form N–6F, SEC File No. 270–185, OMB Control No. 3235–0238.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Form N–6F (17 CFR 274.15), Notice of Intent to Elect to be Subject to Sections 55 through 65 of the Investment Company Act of 1940.'' The purpose of Form N–6F is to notify the Commission of a company's intent to file a notification of election to become subject to Sections 55 through 65 of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''1940 Act''). Certain companies may have to make a filing with the Commission before they are ready to elect to be regulated as a business development company.[1] A company that is excluded from the definition of ''investment company'' by Section 3(c)(1) because it has fewer than one hundred shareholders and is not making a public offering of its securities may lose such an exclusion solely because it proposes to make a public offering of securities as a business development company. Such company, under certain conditions, would not lose its exclusion if it notifies the Commission on Form N–6F of its intent to make an election to be regulated as a business development company. The company only has to file a Form N–6F once.

The Commission estimates that on average approximately 15 companies file these notifications each year. Each of those companies need only make a single filing of Form N–6F. The Commission further estimates that this information collection imposes burden of 0.5 hours, resulting in a total annual PRA burden of 7.5 hours. Based on the estimated wage rate, the total cost to the industry of the hour burden for complying with Form N–6F would be approximately $2,505.

The collection of information under Form N–6F is mandatory. The information provided under the form is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 29, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23575 Filed 10–2–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 17a–19 and Form X–17A–19, SEC File No. 270–148, OMB Control No. 3235–0133.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17a–19 (17 CFR 240.17a–19) and Form X–17A–19 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17a–19 requires every national securities exchange and registered national securities association to file a Form X–17A–19 with the Commission and the Securities Investor Protection Corporation (''SIPC'') within 5 business days of the initiation, suspension, or termination of any member and, when terminating the membership interest of any member, to notify that member of its obligation to file financial reports as required by Exchange Act Rule 17a–5(b).[1]

Commission staff anticipates that the national securities exchanges and registered national securities associations collectively will make 800 total filings annually pursuant to Rule 17a–19 and that each filing will take approximately 15 minutes. The total reporting burden is estimated to be approximately 200 total annual hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 29, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23570 Filed 10–2–14; 8:45 am]

BILLING CODE 8011–01–P

[1] A company might not be prepared to elect to be subject to Sections 55 through 65 of the 1940 Act because its capital structure or management compensation plan is not yet in compliance with the requirements of those sections.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–31267]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

September 26, 2014.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of September 2014. A copy of each 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. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 21, 2014, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE., Washington, DC 20549–8010.

Evergreen Variable Annuity Trust—[File No. 811–8716]

Evergreen Money Market Trust—[File No. 811–5300]

Evergreen Select Equity Trust—[File No. 811–8363]

Evergreen Select Fixed Income Trust—[File No. 811–8365]

Evergreen Municipal Trust—[File No. 811–8367]

Evergreen Select Money Market Trust—[File No. 811–8405]

Evergreen Equity Trust—[File No. 811–8413]

Evergreen Fixed Income Trust—[File No. 811–8415]

Evergreen International Trust—[File No. 811–8553]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Evergreen Variable Annuity Trust transferred its asset to corresponding series of Wells Fargo Variable Trust and on July 16, 2010, made distributions to its shareholders based on net asset value. The remaining applicants transferred their assets to corresponding series of Wells Fargo Funds Trust, and by July 16, 2010, made distributions to their shareholders based on net asset value. Total expenses of $21,699,000 incurred in connection with the reorganizations were paid by Wells Fargo Funds Management, LLC, investment adviser to the acquiring funds, Evergreen Investment Management Company LLC, applicants' investment adviser, or one of their affiliates.

Filing Dates: The applications were filed on August 19, 2014, and amended on September 5, 2014.

Applicants' Address: 200 Berkeley St., Boston, MA 02116.

PHL Variable VA Account 1 [File No. 811–22326]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on August 14, 2014.

Applicant's Address: PHL Variable Insurance Company, One American Row, PO Box 5056, Hartford, CT 06102–5056.

City National Rochdale Alternative Total Return Fund LLC [File No. 811–22503]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to a series of City National Rochdale Funds, and on May 30, 2014, mad a final distribution to its distributed its assets to shareholders based on net asset value. Expenses of $435,740 incurred in connection with the reorganization will be paid by City National Rochdale, LLC, applicant's investment adviser.

Filing Date: The application was filed on September 2, 2014.

Applicant's Address: 570 Lexington Ave., New York, NY 10022–6837.

eUnits(TM) 2 Year U.S. Market Participation Trust: Upside to Cap/Buffered Downside [File No. 811–22348]

eUnits(TM) 2 Year U.S. Market Participation Trust 2: Upside to Cap/Buffered Downside [File No. 811–22663]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On January 28, 2014, and May 23, 2014, respectively, applicants made liquidating distributions to their shareholders, based on net asset value. Each applicant liquidated in accordance with its terms and incurred no expenses in connection with the liquidations.

Filing Date: The applications were filed on September 17, 2014.

Applicants' Address: Two International Place, Boston, MA 02110.

Aspiration Institutional Funds [File No. 811–22944]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on September 16, 2014.

Applicant's Address: 188 West Northern Lights Blvd., Suite 920, Anchorage, AK 99503.

First Defined Portfolio Fund, LLC [File No. 811–9235]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 28, 2014, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $15,000 incurred in connection with the liquidation were paid by applicant or First Trust Advisors L.P., applicant's investment adviser.

Filing Dates: The application was filed on July 30, 2014, and amended on September 25, 2014.

Applicant's Address: 120 East Liberty Dr., Suite 400, Wheaton, IL 60187.

Morgan Stanley Focus Growth Fund [File No. 811–2978]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to a series of Morgan Stanley Institutional Fund, Inc., and on April 7, 2014, made a distribution to its shareholders based on net asset value. Expenses of approximately $930,684 incurred in

connection with the reorganization were paid by applicant and Morgan Stanley Investment Management, applicant's investment adviser.

Filing Date: The application was filed on September 12, 2014.

Applicant's Address: c/o Morgan Stanley Investment Management Inc., 522 Fifth Ave., New York, NY 10036.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23566 Filed 10–2–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73246; File No. SR–Phlx–2014–59]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation Period of the New Options Floor Broker Management System Until November 3, 2014

September 29, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on September 19, 2014, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend the implementation rollout of its new Options Floor Broker Management System.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to extend the rollout of the Exchange's enhancements to the Options Floor Broker Management System (''FBMS''). Today, FBMS enables Floor Brokers and/or their employees to enter, route, and report transactions stemming from options orders received on the Exchange. FBMS also establishes an electronic audit trail for options orders represented by Floor Brokers on the Exchange. Floor Brokers can use FBMS to submit orders to Phlx XL, rather than executing the orders in the trading crowd.

With the new FBMS, all options transactions on the Exchange involving at least one Floor Broker are required to be executed through FBMS. In connection with order execution, the Exchange allows FBMS to execute two-sided orders entered by Floor Brokers, including multi-leg orders up to 15 legs, after the Floor Broker has represented the orders in the trading crowd. FBMS also provides Floor Brokers with an enhanced functionality called the complex calculator that calculates and displays a suggested price of each individual component of a multi-leg order, up to 15 legs, submitted on a net debit or credit basis.

The Exchange received approval to implement the FBMS enhancements as of June 1, 2013,[3] and delayed implementation until July 2013,[4] until September 2013,[5] until December 2013,[6] until March 2014,[7] and again until September 1, 2014.[8] The Exchange made a number of improvements intended to improve the performance of the new system.

Implementation began on March 7, 2014. In its most recent filing delaying implementation,[9] the Exchange stated that the implementation period would be up to September 1, 2014, during which the new FBMS enhancements and related rules would operate along with the existing FBMS and rules.[10] At this time, the Exchange needs additional time to complete the implementation because of technology issues with the new system. The new FBMS is available to all users (Floor Brokers) and in all options. Nevertheless, the Exchange believes that the Floor Brokers need additional time to familiarize themselves with the new features of FBMS, based on that ongoing experience, offer input regarding system performance, and provide the Exchange with the opportunity to address performance improvements. Given some technology issues that the Exchange has encountered during the implementation period, the delay is needed to allow Floor Brokers additional time to adapt to the new system as the Exchange works to improve the performance of the new system. As the performance issues are resolved, the delay will allow the Floor Brokers to migrate their business in a prudent manner. The delay is not as a result of major technology changes from the original proposal and no rule changes are being made; rather, the Exchange continues to work to, generally, make the system more user-friendly and provide more useful interfaces for the ultimate user, the Floor Broker.

Accordingly, the Exchange seeks an additional two month period (until November 3, 2014) to be able to continue the implementation rollout; the Exchange announced the specific date on which the trial period will end and the old FBMS will no longer be available in advance through an Options

[3] Securities Exchange Act Release No. 69471 (April 29, 2013), 78 FR 26096 (May 3, 2013) (SR–Phlx–2013–09).

[4] Securities Exchange Act Release No. 69811 (June 20, 2013), 78 FR 38422 (June 26, 2013) (SR–Phlx–2013–67).

[5] Securities Exchange Act Release No. 70141 (August 8, 2013), 78 FR 49565 (August 14, 2013) (SR–Phlx–2013–83).

[6] Securities Exchange Act Release No. 70629 (October 8, 2013), 78 FR 62852 (October 22, 2013) (SR–Phlx–2013–100).

[7] Securities Exchange Act Release No. 71212 (December 31, 2013), 79 FR 888 (January 7, 2014) (SR–Phlx–2013–129).

[8] Securities Exchange Act Release No. 72135 (May 9, 2014), 79 FR 27966 (May 15, 2014) (SR–Phlx–2014–33).

[9] *Id.*

[10] In the original filing, the Exchange stated its intent to implement these enhancements with a trial period of two to four weeks. *Id.*

Trader Alert. During the additional time period, the Exchange will continue to encourage Floor Brokers to use the new FBMS in order to help them become more familiar with the new features of FBMS.

2. *Statutory Basis*

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by enhancing FBMS to make the Exchange's markets more efficient, to the benefit of the investing public. Although the Exchange needs additional time to finalize the implementation rollout, this time period is expected to be limited, depending on user input, and will involve advance notice to the Exchange membership.

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. The Exchange continues to believe, as it stated when proposing these enhancements, that these enhancements to FBMS should result in the Exchange's trading floor operating in a more efficient way, which should help it compete with other floor-based exchanges and help the Exchange's Floor Brokers compete with floor brokers on other options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

A written comment was received in support of the proposal.[13] The Exchange did not solicit comments. The Comment Letter requested the Commission and Phlx postpone the implementation rollout of the new FBMS from September 1, 2014 to a later date. The Comment Letter alleges that the Floor Brokers did not have proper notice of the end of the implementation period. Also, the Comment Letter requests that the new FBMS be postponed to ensure the public outcry system is maintained. Consistent with what the Comment Letter requests, the Exchange is filing this delay of implementation to extend the implementation rollout of its new FBMS for an additional two month period. The Exchange has provided written notice on numerous occasions.[14] With respect to preserving the open outcry system, the Exchange notes that under the new FBMS orders will continue to be represented in the trading crowd; order exposure has not been eliminated. The Exchange is merely modernizing how orders are executed and reported to support the maintenance of an accurate audit trail.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[17] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[18] The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange can implement the enhancements once they are ready from a technology perspective.

The Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest as it will clarify when the delayed implementation of the FBMS will be effective and operative immediately. In addition, because the proposal only delays the implementation date of the FBMS and does not make any additional changes to the FBMS itself, it does not raise any novel regulatory issues. The Commission notes that the implementation period was scheduled to expire on September 1, 2014, when the existing FMBS would cease to operate and the new FBMS would be fully implemented. However, Phlx has indicated that it needs additional time to continue the implementation rollout of the new FMBS. Therefore, the Commission designates the proposal operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.[20] If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.[21]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2014–59 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2014–59. 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

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* letter from various Phlx Floor Brokers to Mary Jo White, Chairwoman of the Securities and Exchange Commission, dated August 28, 2014 (''Comment Letter'').

[14] *See e.g.* Options Trader Alerts 2014–26 and 2014–5.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] *Id.*

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78s(b)(3)(C).

[21] *Id.*

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2014–59, and should be submitted on or before October 24, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23569 Filed 10–2–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73245; File No. SR–FINRA–2014–026]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the Code of Arbitration Procedure for Customer Disputes and the Code of Arbitration Procedure for Industry Disputes To Increase Arbitrator Honoraria and Increase Certain Arbitration Fees and Surcharges

September 29, 2014.

I. Introduction

On June 13, 2014, the Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 FINRA's Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') (together, ''Codes'') to increase certain arbitration filing fees, member surcharges and process fees, and hearing session fees for the primary purpose of increasing arbitrator honoraria. The proposed rule change was published for comment in the **Federal Register** on July 2, 2014.[3] The Commission received eight comment letters on the proposal.[4] On August 5, 2014, FINRA granted the Commission an extension of time, until September 30, 2014, to act on the proposal.[5] FINRA responded to the comment letters on September 18, 2014.[6] This order approves the rule change as proposed.

II. Description of the Proposed Rule Change

A. Background

As stated in the Notice, FINRA is proposing to amend the Codes to increase certain arbitration filing fees, member surcharges and process fees, and hearing session fees for the primary purpose of increasing arbitrator honoraria.[7] In support of the proposal, FINRA stated that it has ''received numerous complaints in recent years from its arbitrators regarding the honoraria paid to them for their service.''[8] FINRA further noted that surveys of organizations and individuals recruited to be FINRA arbitrators, as well as reports from arbitrators at focus groups, and other arbitrator comments indicate a ''heightened sensitivity to the comparatively low honoraria paid by FINRA.''[9]

Although FINRA acknowledged that there are non-monetary benefits to serving as an arbitrator, FINRA still believes that ''the current honoraria level is a barrier to recruiting.''[10] FINRA also reported that ''arbitrators have regularly cited the honoraria level when leaving the roster, particularly when they are asked to take a new training course or complete a survey or disclosure statement.''[11] Accordingly, FINRA believes that increasing honoraria is needed to ''retain a roster of high-quality arbitrators and attract qualified individuals who possess the skills necessary to manage arbitration cases and consider thoroughly all arbitration issues presented, which are essential elements for FINRA to meet its regulatory objective of protecting the investing public.''[12]

To fund these honoraria increases, FINRA is proposing to increase certain fees and surcharges assessed in the arbitration forum. Specifically, FINRA's proposal would amend Rules 12214 (Payment of Arbitrators), 12800 (Simplified Arbitration), 12900 (Fees Due When a Claim is Filed), 12901 (Member Surcharge), 12902 (Hearing Session Fees, and Other Costs and Expenses), and 12903 (Process Fees Paid by Members) of the Customer Code. The proposed rule change would also amend Rules 13214 (Payment of Arbitrators), 13800 (Simplified Arbitration), 13900 (Fees Due When a Claim is Filed), 13901 (Member Surcharge), 13902 (Hearing Session Fees, and Other Costs and Expenses), and 13903 (Process Fees Paid by Members) of the Industry Code.[13]

In general, the proposal would increase the member surcharges and

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72479 (Jun. 26, 2014), 79 FR 37786 (Jul. 2, 2014) (''Notice'').

[4] *See* Letters from Steven B. Caruso, Esq., Maddox Hargett & Caruso, P.C., dated July 1, 2014 (''Caruso Letter''); Ryan K. Bakhtiari, Aidikoff, Uhl & Bakhtiari, dated July 2, 2014 (''Bakhtiari Letter''); Philip M. Aidikoff, Esq., Aidikoff, Uhl & Bakhtiari, dated July 2, 2014 (''Aidikoff Letter''); Jason Doss, President, Public Investors Arbitration Bar Association (''PIBA''), dated July 22, 2014 (''PIABA Letter''); Ellen Liang, Student Intern, Elissa Germaine, Supervising Attorney, and Jill Gross, Director, Pace Investor Rights Clinic (''PIRC''), Pace University School of Law, dated July 23, 2014 (''PIRC Letter''); David T. Bellaire, Esq., Executive Vice President and General Counsel, Financial Services Institute (''FSI''), dated July 23, 2014 (''FSI Letter''); Andrea Seidt, Ohio Securities Commissioner and President, North American Securities Administrators Association (''NASAA''), dated July 23, 2014 (''NASAA Letter''); and Michael J. Quarequio, Esq., Law Office of Michael J. Quarequio, P.A., dated July 23, 2014 (''Quarequio Letter'').

[5] *See* Letter from Mignon McLemore, Assistant Chief Counsel, FINRA Dispute Resolution, Inc., to Lourdes Gonzalez, Assistant Chief Counsel, Sales Practices, Division of Trading and Markets, Securities and Exchange Commission, dated August 5, 2014.

[6] *See* Letter from Mignon McLemore, Assistant Chief Counsel, FINRA Dispute Resolution, Inc., to Brent J. Fields, Secretary, Securities and Exchange Commission, dated September 18, 2014 (''FINRA Response Letter'').

[7] *See* Notice, 79 FR at 37786. *See also id.* at 37787 n. 3 (noting FINRA's last increase to arbitrator honoraria and citing Securities Exchange Act Rel. No. 41056 (Feb. 16, 1999), 64 FR 10041 (Mar. 1, 1999) (File No. SR–NASD–97–79)).

[8] Notice, 79 FR at 377887 (stating that FINRA is also aware that arbitrators in private arbitration forums set their own rates and charge significantly more than FINRA pays).

[9] *Id.*

[10] *Id.* (noting the non-monetary benefits to serving as a FINRA arbitrator include ''learning the skills necessary to be an effective commercial arbitrator, serving the public, or giving back to one's community by applying professional knowledge gained as an arbitrator'').

[11] *Id.* (stating that ''[t]hese extra requests are viewed as the 'last straw' that prevents good arbitrators from remaining on the roster at the current honoraria rate'').

[12] *Id.*

[13] *See id.* at 37786–87. The text of the proposed rule change is available at the principal office of FINRA, on FINRA's Web site at *http://www.finra.org,* and at the Commission's Public Reference Room. For ease of reference, this Order generally refers only to rules in the Customer Code. However, the changes and discussion would also apply to the same rules of the Industry Code.

process fees for claims larger than $250,000 [14] as well as filing fees for investors, associated persons, or firms bringing claims of more than $500,000 and hearing session fees for claims of more than $500,000.[15] FINRA recognizes that increasing honoraria to market rates would impose a significant burden on forum users and, therefore, believes that ''the proposed rule change is the best option to narrow the gap without unduly increasing costs to forum users.'' [16]

The following sections outline each of FINRA's proposed rule change amendments.

B. Proposed Arbitrator Honoraria Increases

Proposed Amendments to FINRA Rules 12214 and 13214 (Payment to Arbitrators) and FINRA Rules 12800 and 13800 (Simplified Arbitration)

Arbitrator honoraria are the payments that FINRA makes to its arbitrators for the services they provide to FINRA's dispute resolution forum.[17] Currently, under Rule 12214(a), an arbitrator receives $200 for each hearing session in which the arbitrator participates.[18]

FINRA noted that ''[c]hairpersons are often the arbitrators on FINRA's rosters with the most experience who have completed chairperson training.'' [19] In recognition of a chairperson's increased experience and extra responsibilities during a hearing,[20] FINRA currently pays chairpersons an additional $75 per hearing day.[21]

Arbitrators also receive honoraria when they decide contested motions requesting the issuance of a subpoena without a hearing (''contested subpoena requests'').[22] FINRA assesses a $200 fee to the parties for each arbitrator who participates in deciding the contested subpoena request to cover the cost of the honoraria.[23] As FINRA explained, this amount of honoraria is paid on a per case basis, regardless of the number of contested subpoena requests decided by an arbitrator or panel during the case.[24]

Finally, under Rule 12800, when a claimant [25] files a claim in which the amount in dispute, excluding interest and expenses (''claim amount'') is $50,000 or less, one arbitrator decides the case based solely on the documents provided by the parties (*i.e.,* no hearings are held).[26] FINRA refers to these types of cases as ''simplified arbitration.'' The arbitrator who decides a simplified arbitration case currently receives $125 per case.[27]

Under the proposed rule change, FINRA would amend Rules 12214 and 12800 of the Customer Code to increase the arbitrator honoraria.[28] Table 1 (below) illustrates the proposed increases and the percentage changes from the current rates.

PROPOSED ARBITRATOR HONORARIA INCREASES—TABLE 1

Arbitrator honoraria	Current	Proposed	Percentage change
Per arbitrator, per hearing session	$200	$300	50
Chairpersons (per day of hearing)	75	125	67
Contested Subpoena Requests	200	250	25
Simplified Arbitration Cases (flat rate)	125	350	180

Specifically, FINRA is proposing to amend Rule 12214(a) to increase the payment to each arbitrator for each hearing session in which the arbitrator participates from $200 to $300 per hearing session. The rule would also be amended to increase the additional amount that chairpersons receive from $75 to $125 per day of hearings. Rule 12214(d) would be amended to increase the honoraria that arbitrators receive when they decide contested subpoena requests from $200 to $250. Finally, Rule 12800(f) would be amended to increase the honoraria for simplified arbitration cases, which is a flat per case payment, from $125 to $350. FINRA stated that ''[a]lthough no hearings are conducted in simplified arbitrations, these cases can be time-consuming, and, in FINRA's view, the current honoraria level does not reflect fairly the arbitrator's time and effort to render a decision.'' [29]

To fund these increases in arbitrator honoraria, FINRA is proposing to increase certain filing fees, member surcharges and process fees, and the hearing session fees assessed under the Codes as illustrated in the tables below.[30] FINRA stated that it ''believes the proposed fee increases would generate sufficient revenue to offset the proposed increases in the arbitrator honoraria as described [above] without placing an undue burden on the public customer.'' [31]

[14] *See id.* at 37787 n. 4 (noting, however, that the proposed rule change would also increase the member surcharge for the $10,000.01 to $25,000 tier).

[15] *See id.*

[16] *Id.* (explaining that, for example, ''increasing honoraria to market rates could require a greater increase in arbitration filing fees, which would increase the costs of customers, associated persons, and firms'').

[17] *See id.*

[18] *See id.* n. 10 (noting that the term ''hearing session'' typically means ''any meeting between the parties and arbitrator(s) of four hours or less, including a hearing or a prehearing conference''). *See also id.* at 37787 (noting that a typical day has two hearing sessions).

[19] Notice, 79 FR at 37787 (noting that ''to qualify as a chairperson, an arbitrator must have served on at least three arbitrations through award in which hearings were held, or be a lawyer who served on at least two arbitrations through award in which hearings were held'').

[20] *See id.* n. 12 (FINRA notes that, for example, during a typical arbitration, the chairperson decides discovery motions and conducts the initial prehearing conference(s)) (citing Rules 12500(c), 12503(d)(3), 13500(c), and 13503(d)(3)).

[21] *See id.* at 37787–88. *See also id.* at 37788 (explaining that a ''hearing'' means the hearing on the merits and that the chairperson receives the additional honoraria for each day he or she serves as chair at a hearing, regardless of the number of hearing sessions per day).

[22] *See* Notice, 79 FR at 37788 (citing Rules 12214(d) and 13214(d)).

[23] *See id.*

[24] *See id.* (explaining that ''[i]f an arbitrator or the panel decides a contested subpoena request, the arbitrator or panel allocates the cost of the honoraria to the parties in the award'') (citing Rules 12214(d)(3) and 13214(d)(3)).

[25] *See id.* (explaining that FINRA Rules 12100(e) and 13100(e) define the term ''claimant'' as a party that files the statement of claim that initiates an arbitration).

[26] FINRA noted that it recently raised the claim amount limit for simplified arbitration from $25,000 to $50,000. *See id.* at 37794 n. 57 (citing Securities Exchange Act Rel. No. 66913 (May 3, 2012), 77 FR 27262 (May 9, 2012) (File No. SR–FINRA–2012–012)). FINRA also stated that ''[t]ypically, as the claim amount increases, arbitrators encounter issues that are more complicated to resolve, and, thus, require more of their time.'' *Id.* at 37794.

[27] *See* Notice, 79 FR at 37788.

[28] *See id.* at 37794.

[29] *Id.*

[30] *See, e.g., id.* at 37790 (noting that although FINRA refers to rules in the Customer Code, the changes and discussion below also apply to the same rules of the Industry Code).

[31] *Id.*

C. Proposed Increases to Certain Fees and Surcharges

1. Proposed Amendments to FINRA Rules 12900 and 13900 (Fees Due When A Claim is Filed)

Currently, Rules 12900(a) and 13900(a) require a customer, associated person, other non-member, or member who files a claim, counterclaim, cross claim, or third party claim to pay a filing fee to initiate an arbitration. The filing fee consists of two parts: (1) A non-refundable fee, which FINRA keeps when a claim is filed, and (2) a deposit, which FINRA may return in whole or in part to the party that filed the claim in certain circumstances.[32]

Under the proposed rule change, FINRA would amend Rules 12900 and 13900 to increase the filing fees for investors, associated persons, other non-members, or members bringing claims of more than $500,000.[33] Tables 2 and 3 (below) show the current filing fee, proposed filing fee, dollar and percentage changes, and the non-refundable and partial refund breakdown of each fee.[34]

(a) Filing Fees Paid by Customers, Associated Persons, or Other Non-Members

PROPOSED FILING FEES FOR CUSTOMERS, ASSOCIATED PERSONS OR OTHER NON-MEMBER CLAIMANTS—TABLE 2

Amount of claim (exclusive of interest and expenses)	Current claim filing fee	Proposed claim filing fee	Change in filing fee	Percent change	Non-Refundable filing fee with proposed changes	Partial refund with proposed changes
$.01–$1000	$50	$50	$0	0	$25	$25
1,000.01–2,500	75	75	0	0	25	50
2500.01–5,000	175	175	0	0	50	125
5,000.01–10,000	325	325	0	0	75	250
10,000.01–25,000	425	425	0	0	125	300
25,000.01–50,000	600	600	0	0	150	450
50,000.01–100,000	975	975	0	0	225	750
100,000.01–500,000	1,425	1,425	0	0	300	1,125
500,000.01–1,000,000	1,575	1,725	150	10	[375] *425*	[1,200] *1,300*
1,000,000.01–5,000,000	1,800	2,000	200	11	600	[1,200] *1,400*
Over $5,000,000	1,800	2,250	450	25	[600] *750*	[1,200] *1,500*
Non-Monetary/Not Specified	1,250	1,575	325	26	[250] *375*	[1,000] *1,200*

As reflected in Table 2, under the proposed rule change, FINRA would increase the filing fees for claim amounts beginning at the $500,000.01 to $1,000,000 tier, so that the fee increases impact only those claimants with larger claims.[35]

The proposed rule change would also create two new tiers, at the upper level, to spread the cost increases among larger claims. The first new tier of $1,000,000.01 to $5,000,000 would have a filing fee of $2,000. The second new tier would begin at over $5,000,000, with a filing fee of $2,250.[36]

In addition, the proposed rule change would increase the unspecified filing fee by $325. FINRA believes the unspecified claim fees should fall in the middle of the claim amount tiers for each fee type, where a majority of the specified claims are clustered.[37]

As stated above, FINRA believes that these increases would help fund the increases in arbitrator honoraria. Furthermore, FINRA believes potential impact of the proposed increased filing fee would be mitigated by, among other things, (1) FINRA allocating most of the increases to the refundable portion of the filing fee; [38] and (2) the ability of arbitrators to order a respondent to reimburse all or part of any filing fee paid in the award.[39]

(b) Filing Fees Paid by Members

FILING FEES FOR MEMBER CLAIMANT—TABLE 3

Amount of claim (exclusive of interest and expenses)	Current claim filing fee	Proposed claim filing fee	Change in filing fee	Percent change	Non-refundable filing fee	Partial refund with proposed changes
$.01–$1000	$225	$225	$0	0	$200	$25
1,000.01–2,500	350	350	0	0	300	50
2500.01–5,000	525	525	0	0	400	125
5,000.01–10,000	750	750	0	0	500	250
10,000.01–25,000	1,050	1,050	0	0	750	300
25,000.01–50,000	1,450	1,450	0	0	1,000	450
50,000.01–100,000	1,750	1,750	0	0	1,000	750
100,000.01–500,000	2,125	2,125	0	0	1,000	1,125
500,000.01–1,000,000	2,450	2,550	100	4	1,250	[1,200] *1,300*
1,000,000.01–5,000,000	3,200	3,400	200	6	2,000	[1,200] *1,400*
Over $5,000,000	3,700	4,000	300	8	2,500	[1,200] *1,500*
Non-Monetary/Not Specified	1,500	1,700	200	13	500	[1,000] *1,200*

[32] *See id.* at 37788 (providing examples of when fees can be refunded and citing the FINRA rules governing the return of those, including Rules 12902(b)–(d) and 13902(b)–(d)).

[33] *See id.* at 37791.

[34] *See id.* at 37791–92 (discussing ''Filing Fee Increases'').

[35] *See id.*

[36] *See id.* at 37792.

[37] *See id.*

[38] *See id. See also id.* n. 51.

[39] *See* Notice, 79 FR at 37792 (citing Rules 12900(d) and 13900(d)).

As reflected in Table 3, the proposed rule change would also increase the filing fee for members at the highest claim amount tiers, as well as at the unspecified claim tier. For each of the above increases, FINRA stated that it is proposing to add the increased amount to the refundable portion of the filing fee, explaining that ''this part of the filing fee, which is linked closely to FINRA's costs to administer arbitration cases, particularly hearing sessions, could be avoided if the parties agree to settle.'' [40]

2. Proposed Amendments to FINRA Rules 12901 and 13901 (Member Surcharge)

Currently, FINRA Rules 12901(a) and 13901(a) provide that a surcharge will be assessed against each member that: (1) Files a claim, counterclaim, cross claim, or third party claim under the Codes; (2) is named as a respondent in a claim, counterclaim, cross claim, or third party claim filed and served under the Codes; or (3) employed, at the time the dispute arose, an associated person who is named as a respondent in a claim, counterclaim, cross claim, or third party claim filed and served under the Codes. FINRA explained that member surcharges are intended to allocate the costs of administering the arbitration case to the brokerage firms that are involved in those cases. Thus, each member is assessed a member surcharge, based on the aggregate claim amount, when it is brought into the case, whether through a claim, counterclaim, cross claim or third party claim. FINRA noted that the member surcharge is the responsibility of the member party and cannot be allocated to any other party (''non-allocable''). [41]

The proposal would amend Rules 12901 and 13901 to increase the member surcharges primarily for claim amounts larger than $250,000. The proposal would also make a technical change to the title of the tiers in the ''Member Surcharge'' charts from ''Amount in Dispute'' to ''Amount of Claim,'' so that the title describing the claim amounts in all of the fee charts in the Codes would be consistent. [42]

Table 4 (below) illustrates the current member surcharges, the proposed surcharge, and percentage increases.

MEMBER SURCHARGE SCHEDULE—TABLE 4

Amount [in dispute] *of claim* (exclusive of interest and expenses)	Current surcharge	Proposed surcharge	Change	Percentage change
$.01–$2,500	$150	$150	$0	0
2,500.01–5,000	200	150	(50)	(25)
5,000.01–10,000	325	325	0	0
10,000.01–25,000	425	450	25	6
25,000.01–30,000	600	750	150	25
30,000.01–50,000	875	750	(125)	(14)
50,000.01–100,000	1,100	1,100	0	0
100,000.01–250,000	1,700	1,700	0	0
250,000.01–500,000	1,700	1,900	200	12
500,000.01–1,000,000	2,250	2,475	225	10
1,000,000.01–5,000,000	2,800	3,025	225	8
5,000,000.01–10,000,000	3,350	3,600	250	8
Over $10,000,000	3,750	4,025	275	7
Non-Monetary/Not Specified	1,500	1,900	400	27

As reflected in Table 4, the proposal would reduce the member surcharge for some smaller claims [43] and increase the member surcharge for larger claims. [44] The proposal would also increase the member surcharge assessed for unspecified claims by $400. [45] FINRA believes that this change is consistent with comparable increases in the unspecified filing fees for customer and industry claimants. FINRA also noted that member surcharges would remain non-allocable under the proposal, and, thus, would not result in any additional costs to customers. [46]

The proposal would also combine the current $25,000.01-to-$30,000 and $30,000.01-to-$50,000 tiers. FINRA stated that this change ''was intended to make the proposed tiers in the surcharge schedule more consistent with other fee schedules in the Codes.'' [47] FINRA also believes that this merger ''is a more practical approach for case administration purposes, and would make the surcharge schedule easier to understand for parties.'' [48] In addition, the proposal would divide the current $100,000.01-to-$500,000 tier with its surcharge of $1,700 into two new tiers. The surcharge for the new $100,000.01-to-$250,000 tier would remain $1,700 while the surcharge for the new $250,000.01-to-$500,000 tier would increase by $200 or about 12 percent. FINRA proposed this change because it believes ''a large percentage of claims fall within the current tier and FINRA decided that there should be a greater distinction between the claims.'' [49]

3. Proposed Amendments to FINRA Rules 12902 and 13902 (Hearing Session Fees, and Other Costs and Expenses)

Currently, FINRA Rules 12902(a) and 13902(a) assess a hearing session fee for each hearing session held. A hearing session is a meeting of the parties and arbitrators, including any hearing, pre-hearing, and injunctive hearing. [50] According to FINRA, the hearing session fee is ''intended to offset FINRA's cost to conduct hearing sessions.'' [51]

As FINRA explained, the hearing session fee is allocable to the parties and based on the highest claim amount within the case. In addition, Rules 12902(a)(1) and 13902(a)(1) provide arbitrators the authority to apportion the fees in any manner, including assessing

[40] *Id.* (citing Rules 12701(a) and 13701(a)).

[41] *See id.* at 37788 (citing Rules 12901(a)(4) and 13901(d)). *See also* Rules 12701(b) and 13701(b).

[42] *See* Notice, 79 FR at 37788.

[43] *See id.* at 37790.

[44] *See id.* n. 49 (noting that the surcharge for the $10,000.01-to-$25,000 tier would also increase by $25 or 6 percent).

[45] *See id.* at 37790–91.

[46] *See id.*at 37791.

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *See id.* at 37788.

[51] *Id.* at 37789 (noting that ''[t]he cost of conducting a hearing session includes arbitrator compensation and travel expenses, hearing conference rooms, and staff work and expenses'').

the entire amount against one party.[52] FINRA also stated that it applies the refundable portion of the filing fee against any hearing session fees assessed against the party that paid the filing fee.[53]

FINRA is proposing to amend Rule 12902 to increase the hearing session fees for claims of more than $500,000.[54] The proposal would also make two technical changes to the ''Hearing Session Fees'' charts: (1) Add ''(exclusive of interest and expenses)'' to the ''Amount of Claim'' title to make it consistent with those in the Codes' other fee schedules and to clarify that hearing session fees are based on the claim amount and do not include interest or expenses; [55] and (2) change the title of the tier currently identified as ''Unspecified'' to ''Non-Monetary/Not Specified'' so that the title is consistent with those in the other fee schedules in the Codes.[56]

Tables 5 and 6 (below) illustrate the current fee for hearing sessions with either one or three arbitrators, the proposed fee, dollar and percentage changes, and the arbitrator payment at each tier.

(a) Hearings With One Arbitrator

As reflected in Table 5 (below), under the proposed rule change, the fees for a hearing session with one arbitrator would not change.[57] FINRA noted, however, that the proposal would create two new tiers, beginning at $500,000.01, so that the tiers for the fees for a hearing session with one arbitrator match the claim amount tiers for filing fees. FINRA would retain the $450 hearing session fee for each new tier.[58]

TABLE 5—HEARING SESSION FEES FOR SESSION WITH ONE ARBITRATOR

Amount of claim *(exclusive of interest and expenses)*	Current fee for session/ decision w/ one arbitrator	Proposed fee for session/ decision w/ one arbitrator	Change	Percent change
$.01–$2,500	$50	$50	$0	0
2,500.01–5,000	125	125	0	0
5,000.01–10,000	250	250	0	0
10,000.01–25,000	450	450	0	0
25,000.01–50,000	450	450	0	0
50,000.01–100,000	450	450	0	0
100,000.01–500,000	450	450	0	0
500,000.01–1,000,000	450	450	0	0
1,000,000.01–5,000,000	450	450	0	0
Over $5,000,000	450	450	0	0
[Unspecified Damages] *Non-Monetary/Not Specified*	450	450	0	0

FINRA stated that ''[i]n assessing the hearing session fees for cases heard by one arbitrator, FINRA determined to retain the current fee structure . . . even though the current fees would not cover the proposed increased honoraria payments for claims in the $.01–$10,000 tiers.'' [59] FINRA explained that it ''would retain the current fees for these lower claim amounts, so that the forum remains accessible and affordable to claimants with smaller claims.'' [60]

(b) Hearings With Three Arbitrators

As reflected in Table 6 (below), the proposal would create new tiers for claims amounts starting at $500,000.01 for hearing sessions with three arbitrators and would increase the fees only for those tiers.[61]

TABLE 6—HEARING SESSION FEES FOR SESSION WITH THREE ARBITRATORS

Amount of claim *(exclusive of interest and expenses)*	Current fee for session w/ three arbitrators	Proposed fee for session w/ three arbitrators	Change	Percent change
Up–$2,500	N/A	N/A	N/A	N/A
2,500.01–5,000	N/A	N/A	N/A	N/A
5,000.01–10,000	N/A	N/A	N/A	N/A
10,000.01–25,000	N/A	N/A	N/A	N/A
25,000.01–50,000	600	600	0	0
50,000.01–100,000	750	750	0	0
100,000.01–500,000	1,125	1,125	0	0
500,000.01–1,000,000	1,200	1,300	100	8
1,000,000.01–5,000,000	1,200	1,400	200	17
Over $5,000,000	1,200	1,500	300	25
[Unspecified Damages] *Non-Monetary/Not Specified*	1,000	1,125	125	13

[52] *See id.* (noting that ''[a]rbitrators may assess the hearing session fees in the award, or by arbitrator order if the parties held hearing sessions before agreeing to settle''). *See also id.* n. 34 (explaining that ''[t]he parties may agree to a different allocation in the settlement agreement'').

[53] *See* Notice, 79 FR at 37789. *See also id.* at 37788 (explaining, for example, that ''if a case goes to hearing, and the panel orders a respondent to pay all hearing session fees, the refundable portion of the filing fee will be refunded to the claimants, less any fees, costs, and expenses that may have been assessed against this party under the Code'').

[54] *See* Notice, 79 FR at 37792.

[55] *See id.* at 37793 (noting that the exclusion of interest or other expenses ''would codify current practice'').

[56] *See id.* at 37793–94.

[57] *See id.* at 37792.

[58] *See id.* at 37793.

[59] *Id.*

[60] *See id.*

[61] *See id.*

FINRA stated that it would retain the current fees for lower claim amounts despite the fact that ''the hearing session fees do not cover the forum's actual costs for smaller claims.'' [62] FINRA stated that it intends this proposed amendment to keep the forum accessible and affordable for claimants with smaller claims.[63] FINRA further noted that the proposed increases on larger claim amounts ''would provide the forum with enough revenue to cover its honoraria payments for these cases as well as offset the deficits created at the lower tier amounts.'' [64]

4. Proposed Amendments to FINRA Rules 12903 and 13903 (Process Fees Paid by Members)

Currently, FINRA Rules 12903(a) and 13903(a) require each member that is a party to an arbitration in which the claim amount is more than $25,000 to pay process fees, which are assessed at specific milestones in each case.[65] In particular, FINRA assesses each member a non-refundable prehearing process fee of $750 at the time the parties are sent arbitrator lists and a non-refundable hearing process fee, based on the claim amount, when the parties are notified of the date and location of the hearing on the merits. Like the member surcharges, the process fee is non-allocable to other parties to the arbitration.[66]

As reflected in Table 7 (below), the proposal would combine the prehearing process fee and hearing process fee, into one fee, which would be due at the time the parties are sent the arbitrator lists.[67] FINRA recognizes that this change would result in an increase to the member process fee in many cases.[68] However, FINRA believes this change is ''necessary to ensure that the forum has the resources available at the initial stages of a case to cover the proposed honoraria increases.'' [69] Further, FINRA states that this change would also ''make the collection process more efficient for FINRA and the members, as it would reduce the number of invoices sent and collection activities performed by FINRA's Finance Department.'' [70] The proposed rule change would also amend Rule 12903 to increase the member process fees for claim amounts larger than $250,000.[71]

Table 7 (below) shows the current process fees, the proposed combined fees, and the changes between the two.

MEMBER PROCESS FEE SCHEDULE—TABLE 7

Amount of claim (exclusive of interest and expenses)	Pre-hearing process fee	Hearing process fee	Current combined process fees	Proposed fees	Change	Percentage change
$.01–$5,000	N/A	N/A	N/A	N/A	N/A	N/A
2,500.01–5,000	N/A	N/A	N/A	N/A	N/A	N/A
5,000.01–10,000	N/A	N/A	N/A	N/A	N/A	N/A
10,000.01–25,000	N/A	N/A	N/A	N/A	N/A	N/A
25,000.01–30,000	750	1,000	1,750	N/A	N/A	N/A
30,000.01–50,000	750	1,000	1,750	N/A	N/A	N/A
50,000.01–100,000	750	1,700	2,450	2,250	(200)	(8)
100,000.01–250,000	750	2,750	3,500	3,250	(250)	(7)
250,000.01–500,000	750	2,750	3,500	3,750	250	7
500,000.01–1,000,000	750	4,000	4,750	5,075	325	7
1,000,000.01–5,000,000	750	5,000	5,750	6,175	425	7
5,000,000.01–10,000,000	750	5,500	6,250	6,800	550	9
Over 10,000,000	750	5,500	6,250	7,000	750	12
Non-Monetary/Not Specified	750	2,200	2,950	3,750	800	27

The proposal would increase the fees for claim amounts beginning with the new $250,000.01-to-$500,000 tier. Similar to the member surcharge increase discussed above, FINRA is proposing to spread the process fee increases among larger claim amounts, while retaining or decreasing the fees associated with the lower claim amounts.[72] The proposal would also increase the process fees assessed for unspecified claims by $800. FINRA believes that this change is consistent with comparable increases in the unspecified filing fees for customer and industry claimants.[73] FINRA also explained that the member process fee—like the member surcharge increase discussed above—would remain non-allocable under the proposal, and, thus, would not result in any additional costs to customers.[74]

III. Summary of Comments and FINRA's Response

As noted above, the Commission received eight comment letters on the proposed rule change [75] and a response letter from FINRA.[76] As discussed in more detail below, all of the eight commenters expressed support, in whole or in part, for FINRA's proposal.[77] Three of the eight commenters, however, also suggested further modifications.[78] In addition, two of the eight commenters also expressed partial opposition to the proposal.[79] The sections below outline the suggestions or specific concerns raised by those five commenters as well as FINRA's response.

A. FINRA Members Should Pay All Proposed Fee Increases

While a majority of the commenters supported the proposed increase in arbitrator honoraria, two commenters opposed the proposed increase in filing fees that customers would pay to help fund the honoraria increases.[80]

One of these commenters expressed concern ''that requiring investors to pay the increased honorarium by raising the filing fees may deny them access to the

[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] *See id.* at 37788.

[66] *See id.* (citing Rules 12903(c) and 13903(c)). *See also* Rules 12701(b) and 13701(b).

[67] *See* Notice, 79 FR at 37791.

[68] *See id.*

[69] *Id.*

[70] *Id.*

[71] *See id.* at 37791.

[72] *See id.*

[73] *See id.*

[74] *See id.*

[75] *See supra* note 4.

[76] *See supra* note 6.

[77] *See* Caruso Letter; Bakhtiari Letter; Aidikoff Letter; PIABA Letter; PIRC Letter; FSI Letter; NASAA Letter; and Quarequio Letter.

[78] *See* PIRC Letter; FSI Letter; and Quarequio Letter.

[79] *See* PIABA Letter and NASAA Letter.

[80] *See* PIABA Letter at 1–2; NASAA Letter at 2.

forum.'' [81] Rather, this commenter stated that ''FINRA members should be responsible for paying 100% of the proposed increased filing fees claims'' given that ''investors are forced into the FINRA arbitration forum as a result of mandatory arbitration.'' [82]

Similarly, a second commenter opposed ''FINRA's effort to pass along increased honoraria costs to investors that are forced into FINRA's dispute resolution forum as the result of industry mandatory pre-dispute arbitration agreements.'' [83] This commenter contended that investors with '''more complicated to resolve' and 'time-consuming' claims might prefer pursuing their claims in court rather than paying more for FINRA arbitrators to handle the disputes.'' [84]

In addition, both of these commenters argued that because FINRA member firms use pre-dispute arbitration agreements (''PDAAs'') to require their customers to arbitrate claims, investors do not have a choice of forum. Consequently, these commenters asserted that such investors should not be required to pay the proposed increase in filing fees.[85]

In response, FINRA noted that ''as claimants and respondents utilize the arbitration facilities to resolve disputes, it would be inequitable for industry members to pay 100 percent of the filing fee increase.'' [86] Furthermore, FINRA disagreed with the one commenter's assertion that an increase in filing fees for investors may serve to deny access to the forum for investors.[87] Rather, FINRA stated that the proposal would help minimize the impact on claimants of the increased fees because ''the filing fee increases begin for claims over $500,000 and a majority of the increases are added to the refundable portion of the fee.'' [88]

In response to the comment that investors may not be able to afford the proposed filing fees after having suffered ''catastrophic losses,'' [89] FINRA noted that ''an inability to pay the filing fees would not foreclose an investor's ability to seek redress in the forum'' as FINRA may waive the filing fees ''[i]f an investor demonstrates financial hardship.'' [90]

In its response, FINRA also noted that neither the use of PDAAs by FINRA members nor whether certain claims should be litigated in court or arbitrated is the subject of the proposal. Consequently, FINRA stated that both issues are ''outside the scope of the filing.'' [91] Nevertheless, FINRA noted that, while the proposed filing fees may not be comparable to those in state courts, ''investors experience substantial savings in arbitration compared to litigation.'' [92] Accordingly, FINRA stated that ''the benefits and cost savings of arbitration make filing an arbitration claim a less costly option for investors.'' [93]

Therefore, for these reasons, FINRA declined to modify the proposed rule change to assign all filing fee increases to FINRA members.[94]

B. Assessment of Forum Fees Against Respondents

One commenter that opposed the proposal, stating that FINRA members should be responsible for paying all of the proposed increased filing fees, also contended that ''[t]his point is emphasized even more when you consider that arbitration panels rarely assess forum fees against respondents even when they find the respondents liable for the claimants' losses.'' [95]

FINRA refuted this commenter's assertion, calling it ''inaccurate and misleading.'' [96] FINRA noted that ''arbitrators make allocation decisions on a case-by-case basis depending on what happened during the hearings.'' [97] FINRA also stated that it reviewed customer claimant cases closed by award from 2011 through 2013 and, ''[i]n only four of these cases (less than one percent), the respondent was found liable for claimants' losses, but was not assessed any fees.'' [98] FINRA further stated that three of those four cases were pursued by claimants in default proceedings,[99] and in the fourth case, only the claimant appeared at the hearing.[100] Furthermore, with respect to the fourth case, FINRA also stated that it ''waived the claimant's filing fees in that matter and the arbitrators awarded the claimant more than 160 percent of the compensatory damages claimed plus $15,000 in sanctions from the respondent firm.'' [101]

For these reasons, FINRA declined to modify its proposal in response to comments.

C. Request Additional Data

One commenter claimed that FINRA's proposal does not provide sufficient information ''to assess the reasonableness or anticipated effectiveness of the increases that FINRA proposes'' because the statistical models and underlying data were not provided to the public.[102] This commenter requested that FINRA produce, as part of the public comment file, the statistical models FINRA used to ''match anticipated revenue with expenses for purposes of setting increased rates.'' [103]

In response to this comment, FINRA stated that the information provided in the proposal is ''sufficient to elicit meaningful comment.'' [104] Moreover, FINRA noted that its financial systems and the data generated by those systems ''are used by only FINRA staff when conducting FINRA business and operations.'' [105] Accordingly, FINRA claimed that ''[b]ecause of the proprietary nature of these systems and their data, FINRA believes this information should remain non-public.'' [106]

D. Enhance Recruitment To Expand the Arbitrator Roster

One commenter claimed that it cannot assess whether there is a need for increased arbitrator honoraria because FINRA's proposal does not provide ''basic information regarding the existing size or quality of FINRA's

[81] PIABA Letter at 1–2.

[82] *Id.* at 2.

[83] NASAA Letter at 2 (NASAA generally supports and ''does not question FINRA's need to update arbitrator honoraria'' and ''appreciates FINRA's efforts to mitigate the impact to smaller public users,'' however, ''NASAA respectfully disagrees with FINRA that it is incumbent upon [investors] to pay or contribute more to enhance FINRA's dispute resolution program.'').

[84] *Id.* (claiming that state court filing fees in most jurisdictions are generally less than the filing fees contemplated in the proposal). *See also* id. (stating that ''investors with catastrophic losses as might be found in half- to multi-million dollar claims are often the least able to afford large fees'').

[85] *See* PIABA Letter at 2; NASAA Letter at 2.

[86] Response Letter at 3.

[87] *See id.* (citing PIABA Letter at 1–2).

[88] *Id.* (citing Notice, 79 FR at 37791–92).

[89] *See supra* note 84.

[90] Response Letter at 3.

[91] *Id.*

[92] *Id.* (explaining that, for example, ''claims in arbitration are typically resolved more quickly than claims in litigation'' and ''investors in arbitration avoid the expense of depositions and similar costs associated with discovery in litigation'').

[93] *Id.* at 4.

[94] *See id.*

[95] PIABA Letter at 2.

[96] Response Letter at 5.

[97] *Id.* (explaining that arbitrator training materials and the Award Information Sheet guide arbitrators on making allocation decisions and noting that some of the factors arbitrators might consider when making allocation decisions include ''a party's perceived ability to pay forum fees'').

[98] *Id.*

[99] *See id.* (noting that in these three cases, the arbitrators assessed forum fees of $300, $300, and $1,425 respectively against the claimants).

[100] *See id.* (noting that in the fourth case, the arbitrators assessed the claimant a total of $4,500 for two hearing sessions and four prehearing conference sessions).

[101] *Id.*

[102] *Id.*

[103] NASAA Letter at 2.

[104] Response Letter at 5.

[105] *Id.*

[106] *Id.*

existing arbitrator pool, including relevant recruiting and retention rates.'' [107] This commenter also suggested that the Commission ''consider expanding FINRA's roster by revising arbitrator qualifications and by utilizing different recruiting methods of outreach.'' [108] Finally, this commenter claimed that ''FINRA may have greater flexibility in setting honoraria amounts by expanding its geographical presence.'' [109]

In response, FINRA stated that it ''relies on a diverse roster of over 6,300 arbitrators to maintain its fair, impartial and efficient system of dispute resolution'' and that ''[t]he exact number of arbitrators, broken down by public and non-public classifications, is updated monthly and published on [FINRA's] Web site.'' [110] FINRA also responded to the commenter's concerns about the quality of FINRA's arbitrators by describing its: (i) Minimum requirements for arbitrators; (ii) application and screening processes; (iii) background verification and re-verification processes; (iv) arbitrator training programs; (v) mandatory surveys to ensure classification as either a public or a non-public arbitrator; and (vi) evaluation processes by FINRA staff, the parties, and fellow arbitrators at the conclusion of each case.[111]

With respect to the commenter's concerns about expanding FINRA's geographical presence, FINRA explained that it ''already focuses on areas of the country where there is a lower number of available arbitrators'' and that ''[i]n its effort to recruit arbitrators from a diverse group of professionals, FINRA continues to conduct outreach activities in underserved locations.'' [112] FINRA further noted that it ''tracks the success of its recruitment initiatives by asking in its application how applicants learned of the arbitrator opportunity'' and that ''[i]t also asks [applicants] to provide names of individuals whom they recommend for the roster.'' [113]

FINRA stated that ''the increased honoraria would be helpful in its recruiting efforts, as staff has received feedback from prospective applicants who have declined to apply when they learn of the current pay structure.'' [114] FINRA further explained that increased honoraria would also support its ''retention objective, as current arbitrators express their concerns to FINRA staff regularly about the honoraria levels.'' [115]

For these reasons, FINRA declined to modify its proposal.

E. Apply Increased Honoraria Retroactively

One commenter expressed concern that applying the proposed increased honoraria prospectively would create a two-tier pay structure: One for arbitrators assigned before the proposal's effective date and another for those assigned after the effective date.[116] This commenter suggested making the honoraria increase partially retroactive to pending cases.

In response, FINRA explained that, although it understands the concern, it believes that if the suggestion was implemented it ''would have a negative impact on the forum's resources.'' [117] FINRA noted that if it were to extend the honoraria increases to pending cases, the honoraria payments would not be properly funded, as the fees in those cases would be based on the current, lower fee structure.[118] FINRA stated that in order ''[t]o simplify the technology programming and to ensure consistent application of the honoraria and fee changes, FINRA believes the increased honoraria should apply to cases filed on or after the effective date.'' [119]

For these reasons, FINRA declined to modify the proposal to make the honoraria increase partially retroactive to pending cases.

F. The Proposal Could Create Conflicts of Interest

One commenter suggested that ''FINRA should also consider the impact increased arbitrator compensation could have on certain conflicts of interest.'' [120] For example, ''an arbitrator may be reluctant to grant a Motion to Dismiss because it would eliminate the potential compensation they would receive from serving on the panel.'' [121] Therefore, this commenter suggested that FINRA consider paying a ''set honorarium'' which, the commenter believes, ''would reduce or eliminate any reluctance on the part of the arbitrator to grant the motion that is motivated by a desire to be adequately compensated for their time.'' [122]

In response, FINRA stated that it ''does not believe that increasing the honoraria would prevent arbitrators from performing their duties and deciding disputes in a fair manner, as they must agree to do by executing the arbitrator oath.'' [123] Furthermore, FINRA noted that, ''if arbitrators deny a motion to dismiss, it would be because they believe that the grounds for dismissing a claim prior to the conclusion of a claimant's case in chief have not been met.'' [124]

FINRA also clarified that, although the commenter does not define ''set honorarium,'' FINRA interpreted it to mean ''a fixed amount, regardless of the number of motions decided or hearings held during a case.'' [125] FINRA believes that such a payment structure would present the following challenges to the forum: (1) It would negate the benefit of providing the parties with some control over the tasks and activities that arbitrators need to perform in a case; [126] (2) it ''would be unfair to parties whose arbitration case requires a minimal number of hearing sessions as well as to those arbitrators who sit on cases with a large number of hearing sessions;'' [127] and (3) ''more cases would go to hearing, as there would be no incentive to settle, which would result in an increase in forum expenses.'' [128]

For these reasons, FINRA declined to amend the proposal to pay a ''set honorarium.''

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[107] NASAA Letter at 2.

[108] *Id.* at 3.

[109] *Id.* (explaining that ''[e]xtending its reach in this manner would reduce FINRA travel expense reimbursements for many participants'').

[110] Response Letter at 6 (citing FINRA, Arbitration & Mediation, Dispute Resolution Statistics, available at *http://www.finra.org/ArbitrationAndMediation/Arbitrators/Responsibilites/OathofArbitrator/index.htm*). *See also id.* (noting that FINRA's roster ''consists of arbitrators from various backgrounds, including educators, accountants, medical professionals and others, as well as lawyers and securities professionals'').

[111] *See* Response Letter at 6–7.

[112] *Id.* at 7 (citing, for example, ''attending business and recruitment conferences, initiating direct marketing and ad campaigns, publishing articles in *The Neutral Corner,* and soliciting applicant referrals in a monthly email that is distributed to FINRA neutrals'').

[113] *Id.*

[114] *Id.*

[115] *Id.*

[116] *See* Quarequio Letter at 1 (stating that ''[a]lthough this imbalance would be temporary until existing cases work their way through the system, it does not appear fair to have, at least for some time, a 'two-tier' pay structure which penalizes those who have been arbitrators longer'').

[117] Response Letter at 8.

[118] *See id.*

[119] *Id.*

[120] FSI Letter at 2.

[121] *Id.*

[122] *Id.*

[123] Response Letter at 8 (citing Canon 1 of the Code of Ethics for Arbitrators in Commercial Disputes which states that ''an arbitrator should uphold the integrity and fairness of the arbitration process'' and requires that ''arbitrators conduct themselves in a way that is fair to all parties and should not be swayed by outside pressure, public clamor, and fear of criticism or self-interest'').

[124] *Id.* at 8–9.

[125] *Id.* at 9.

[126] *See id.*

[127] *Id.*

[128] *Id.*

G. Calculate Hearing Session Fees at an Hourly Rate

One commenter suggested changing FINRA's current payment structure for arbitrators ''from sessions of 'four hours or less' to an hourly rate.'' [129] Specifically, this commenter claimed that, in its experience, ''most hearing sessions last significantly less than four hours and the length of each session can vary considerably,'' [130] and that arbitrators are compensated the same amount regardless of whether a hearing session lasts two hours or four hours.[131]

In response, FINRA explained that the structure of hearing session payments is not the subject of this rule filing and therefore outside the scope of the proposal.[132] Therefore, FINRA declined to respond to that comment at this time.[133]

IV. Discussion and Commission Findings

The Commission has carefully considered the proposal, the comments received, and FINRA's responses to the comments. Based on its review of the record, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[134] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(5) of the Act,[135] which requires that FINRA's rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using any facility or system which FINRA operates or controls. The Commission also finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[136] which requires, among other things, that FINRA's rules 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.

As outlined above, the Commission received eight comment letters on the proposed rule change [137] and FINRA's response to the comments.[138] While the Commission appreciates the suggestions raised by some commenters, the Commission believes that FINRA responded appropriately to their concerns. Most notably, the Commission agrees with FINRA's observation that ''[a] majority of the commenters acknowledge that, as it has been 15 years since the last increase, the proposed increase is long overdue and critical to the forum in recruiting and retaining a roster of high quality arbitrators.'' [139]

Specifically, the Commission believes that the proposed rule change would further the purposes of the Act as it provides for the equitable allocation of reasonable fees, surcharges and other charges among FINRA members, customers, associated persons, or other non-members using FINRA's arbitration forum.[140] The Commission agrees with the views of certain commenters that FINRA: (1) ''investigated several alternative approaches for increasing honoraria and has struck an effective balance'' and (2) took ''a measured and balanced approach to the economic considerations that are associated with the arbitrator honoraria increases.'' [141] The Commission also notes, as certain commenters did, ''FINRA's effort to minimize the exposure of the fee increases to the investing public.'' [142] The Commission also agrees that FINRA's proposal to allocate the majority of the proposed fee increases among higher claim amounts will help ''[minimize] the impact of the increases on smaller claims and keeps the arbitration forum accessible for the small investor.'' [143]

Moreover, the Commission also believes that the proposed rule change would further the purposes of the Act as it is reasonably designed to protect investors and the public interest.[144] In addition to the observations above regarding FINRA's efforts to minimize the exposure of its fee increases to investors in order to keep the forum accessible to small investors,[145] the Commission also agrees with FINRA's assessment that the proposal is designed to ''retain a roster of high-quality arbitrators and attract qualified individuals who possess the skills necessary to manage arbitration cases and consider thoroughly all arbitration issues presented, which are essential elements for FINRA to meet its regulatory objective of protecting the investing public.'' [146]

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[147] that the proposed rule change (SR–FINRA–2014–026), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[148]

Kevin M. O'Neill,

Deputy Secretary.

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[129] PIRC Letter at 2 (suggesting that ''[t]his more equitable compensation structure should help eliminate unnecessary expenses to FINRA—which are passed along to claimants and members'').

[130] *Id.*

[131] *See id.*

[132] *See* Response Letter at 9.

[133] *See id.*

[134] In approving the proposed rule change, the Commission has also considered the rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[135] 15 U.S.C. 78o–3(b)(5).

[136] 15 U.S.C. 78o–3(b)(6).

[137] *See supra* note 4.

[138] *See supra* note 6.

[139] Response Letter at 2. *See also* Aidikoff Letter at 1 (stating that ''there has been no increase in the arbitrator honoraria for fifteen years and in my view increasing these payments will help retain qualified individuals in the pool as well as helping to recruit new arbitrators'').

[140] *See* 15 U.S.C. 78o–3(b)(5).

[141] Caruso Letter at 1. *See also* Aidikoff Letter at 1 (stating that ''increasing these payments will help retain qualified individuals in the pool as well as helping to recruit new arbitrators.''); Bakhtiari Letter at 1 (stating that ''[t]he honoraria raise is fair and will not materially affect aggrieved public investors that file claims in the Finra forum'').

[142] PIRC Letter at 1–2 (noting that the fee allocation ''is consistent with FINRA's goal of maintaining a just and equitable forum for parties to settle their disputes''). *See also* NASAA Letter at 1–2 (stating that it ''appreciates FINRA's efforts to mitigate the impact to smaller public users'').

[143] Response Letter at 4. *See also id.* (explaining that ''to further mitigate the impact of the filing fee increases, most of the increases would be added to the refundable portion of the filing fee'' and noting that ''the filing fee and hearing session fee increases for customers begin for claim amounts of more than $500,000'').

[144] *See* 15 U.S.C. 78o–3(b)(6).

[145] *See supra* notes 142 and 143 and accompanying text.

[146] *See* Notice, 79 FR at 377887. *See also* Response Letter at 2.

[147] 15 U.S.C. 78s(b)(2).

[148] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73238; File No. SR–FINRA–2014–038]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt FINRA Rule 3110(e) (Responsibility of Member To Investigate Applicants for Registration) in the Consolidated FINRA Rulebook

September 26, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''SEA'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 18, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by 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 NASD Rule 3010(e) (Qualifications Investigated) relating to background investigations as FINRA Rule 3110(e) (Responsibility of Member to Investigate Applicants for Registration) in the consolidated FINRA rulebook. The proposed rule change streamlines and clarifies the rule language and adds a provision to require members to adopt written procedures that are reasonably designed to verify the accuracy and completeness of the information contained in an applicant's Form U4 (Uniform Application for Securities Industry Registration or Transfer). In addition, the proposed rule change adds Supplementary Material .15 (Temporary Program to Address Underreported Form U4 Information) to FINRA Rule 3110 (Supervision) to establish a temporary program that will issue a refund to members of Late Disclosure Fees assessed for the late filing of responses to Form U4 Question 14M, subject to specified conditions.

The proposed rule change would delete NASD Rule 3010(f) (Applicant's Responsibility), Incorporated NYSE Rule 345.11 (Investigation and Records) and Incorporated NYSE Rule Interpretation 345.11/01 (Application—Investigation) and /02 (Application—Records).

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 NASD Rule 3010(e) relating to background investigations as FINRA Rule 3110(e). The proposed rule change streamlines and clarifies the rule language. In addition, the proposed rule change adds a provision to proposed FINRA Rule 3110(e) to require members to adopt written procedures that are reasonably designed to verify the accuracy and completeness of the information contained in an applicant's Form U4 as described below. Further, the proposed rule change adds Supplementary Material .15 to FINRA Rule 3110 to establish a temporary program that will issue a refund to members of Late Disclosure Fees assessed for the late filing of responses to Form U4 Question 14M, subject to specified conditions.

The proposed rule change would delete NASD Rule 3010(f) because it has been rendered obsolete. The proposed rule change would also delete Incorporated NYSE Rule 345.11[4] and NYSE Rule Interpretation 345.11/01 and /02 as they are substantially similar to proposed FINRA Rule 3110(e), addressed by other rules or otherwise rendered obsolete by the proposed approach reflected in FINRA Rule 3110(e).

I. Existing Requirements

A critical part of the registration process in the securities industry is the background investigation of applicants for registration and the timely and accurate reporting of information to the Central Registration Depository (CRD®) system via the Form U4. For instance, FINRA reviews the information disclosed on the Form U4 to determine whether an applicant is subject to a statutory disqualification[5] or whether the applicant may present a regulatory risk for the firm and customers. Further, firms use the information reported to the CRD system to determine whether an applicant is subject to a statutory disqualification and to conduct background checks on applicants when making registration decisions. In addition, the information that FINRA releases to the public through BrokerCheck, which helps investors make informed choices about the individuals and firms with which they conduct business, is derived from the CRD system.

NASD Rule 3010(e) provides that a firm must ascertain by investigation the good character, business reputation, qualifications and experience of an applicant before the firm applies to register that applicant with FINRA.[6] NASD Rule 3010(e) does not place any limits on the scope of such a background investigation—a firm must obtain all the necessary information to make an evaluation.[7] In addition, if the applicant previously has been registered with FINRA, NASD Rule 3010(e) specifically requires that the firm review a copy of the applicant's most recent Form U5 (Uniform Termination Notice for Securities Industry Registration) within 60 days of the filing date of an application for registration or demonstrate that it has made reasonable efforts to do so.[8]

NYSE Rule 345.11, which is the corresponding NYSE rule, requires firms to investigate thoroughly the previous record of: (1) Persons required to be registered with the NYSE; (2) persons who regularly handle or process securities or monies or maintain the books and records relating to securities

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). 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).

[4] For convenience, the proposed rule change refers to Incorporated NYSE Rules as NYSE Rules.

[5] *See* Sections 3(a)(39) and 15(b)(4) of the Act.

[6] Firms must comply with MSRB Rule G–7 (Information Concerning Associated Persons) regarding those applicants engaged solely in municipal securities activities.

[7] FINRA has stated that firms should consider all available information gathered in the pre-registration process for this purpose, including, but not limited to Forms U4 and U5 responses, authorized searches of the CRD system, fingerprint results obtained under SEA Rule 17f–2 and communications with previous employers, and that firms also may wish to consider private background checks, credit reports and reference letters. *See Regulatory Notice* 07–55 (November 2007). In addition, FINRA has stated that firms must ensure that such background investigations are conducted in accordance with all applicable laws, rules and regulations (including federal and state requirements) and that all necessary approvals, consents and authorizations have been obtained. *See Regulatory Notice* 07–55.

[8] If the applicant has been recently employed by a Futures Commission Merchant or an Introducing Broker that is notice-registered with the SEC pursuant to Section 15(b)(11) of the Act, the registering firm also is required to review a copy of the individual's most recent CFTC Form 8–T.

or monies who are not otherwise required to be registered; and (3) persons having direct supervisory responsibility over persons engaged in the above activities who are not otherwise required to be registered.[9] For persons required to be registered with the NYSE, firms generally fulfill their investigative obligation by verifying the information contained in the Form U4 and by reviewing the applicant's most recent Form U5, if the applicant previously has been registered. For persons subject to NYSE Rule 345.11 who are not required to be registered, firms generally fulfill their investigative obligation by verifying the information contained in the employment questionnaire or application required under SEA Rule 17a–3(a)(12)(i).[10] NYSE Rule 345.11 also requires firms to make further inquiry, where appropriate, in light of the background information developed, the position for which the person is being considered or other circumstances.

The Form U4 requires that the person signing the form on behalf of the firm certify that he or she has taken appropriate steps to verify the accuracy and completeness of the information contained in and with that form.[11]

II. Proposed FINRA Rule 3110(e)

FINRA is proposing to amend FINRA Rule 3110 by adding a new paragraph (e) and incorporating the requirements of NASD Rule 3010(e) into that paragraph, subject to the following changes.

FINRA is proposing to streamline and clarify the rule language. For instance, NASD Rule 3010(e) currently provides that ''[e]ach member shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications, and experience of any person prior to making such a certification in the application of such person for registration with this Association,'' whereas proposed FINRA Rule 3110(e) provides that ''[e]ach member shall ascertain by investigation the good character, business reputation, qualifications and experience of an applicant before the member applies to register that applicant with FINRA and before making a representation to that effect on the application for registration.'' Further, proposed FINRA Rule 3110(e) clarifies that a firm is required to review a copy of an applicant's most recent Form U5 if the applicant previously has been registered with FINRA or another self-regulatory organization. With respect to a firm's obligation to review an applicant's Form U5, the proposed rule continues to provide that if the firm is unable to review the Form U5, it has to demonstrate that it has made reasonable efforts to do so. FINRA expects firms to use this provision in very limited circumstances, such as where the previous firm fails to file a Form U5 or goes out of business before filing a Form U5. FINRA also is proposing to re-label current FINRA Rule 3110(e) (Definitions) as FINRA Rule 3110(f) (Definitions) and update the cross-references in FINRA Rule 3110 to reflect this change.

In addition, FINRA is proposing to include in proposed FINRA Rule 3110(e) a requirement that firms adopt written procedures that are reasonably designed to verify the accuracy and completeness of the information contained in an applicant's Form U4 no later than 30 calendar days after the form is filed with FINRA. FINRA believes that such a requirement is consistent with the requirements of NYSE Rule 345.11 and the Form U4. The proposed requirement would only apply to an initial or a transfer Form U4 for an applicant for registration, and not to Form U4 amendments. FINRA further believes that imposing such a requirement would not be unduly burdensome for firms; FINRA expects that firms already have a review process in place to verify the information contained in the Form U4 for most applicants for registration.

Proposed FINRA Rule 3110(e) would also require that a firm's written procedures must, at a minimum, provide for a search of reasonably available public records[12] conducted by the member or a third-party service provider to verify the accuracy and completeness of the information contained in an applicant's Form U4.[13] The requirement to conduct a public records search must be satisfied no later than 30 calendar days after the initial or transfer Form U4 is filed with FINRA, with the understanding that if a member becomes aware of any discrepancies as a result of a public records search conducted after the filing of the Form U4, the member would be required to file an amended Form U4 with FINRA. As discussed in more detail below, FINRA does not believe that this requirement would be unduly burdensome for members given the availability of online access to public records databases and the relatively low cost of hiring a third-party service provider to conduct such a search. Therefore, this requirement would provide firms with a relatively low cost method to verify that all disclosure events evidenced in reasonably available public records have been reported on the Form U4. In addition, FINRA is aware that many firms already have a review process in place that entails searching public records, and therefore the proposed requirement will not impose significant burdens on these firms.

A member could comply with the requirement to conduct a public records search in several ways. For example, a member may satisfy the requirement by: (1)(a) reviewing a credit report from a major national credit reporting agency that contains public record information (such as bankruptcies, judgments and liens), or (b) searching a reputable national public records database; and (2) reviewing the fingerprint results obtained as part of the registration process. Alternatively, a member could comply with this requirement by using the services of a specialized provider, such as Business Information Group, Inc. (BIG),[14] to provide the firm with a

[9] *See also* NYSE Rule Interpretation 345.11/01 and /02.

[10] SEA Rule 17a–3(a)(12)(i) requires that a broker-dealer make and keep current a questionnaire or application for employment executed by each associated person, other than persons whose functions are solely clerical or ministerial. The questionnaire or application must be approved in writing by an authorized representative and must, among other information, contain the associated person's employment, disciplinary and criminal history. If an associated person is a registered person of the broker-dealer, then retention of a full, correct and complete copy of the associated person's originally executed Form U4 for registration with FINRA or other regulatory agency is sufficient to satisfy this requirement.

[11] The Form U4 also provides that the person signing the form on behalf of the firm certify that the firm has communicated with the applicant's previous employers for the past three years and has documentation on file with the names of the persons contacted and the date of contact. In addition, members have an obligation to comply with SEA Rule 17f-2. Pursuant to SEA Rule 17f–2, specific persons employed in the securities industry are required to be fingerprinted for purposes of a criminal background check. Firms are responsible for obtaining a prospective employee's fingerprints and required identifying information. Firms then submit the prospective employee's fingerprints together with the required identifying information to FINRA. FINRA, in turn, submits these fingerprints to the FBI. FINRA also makes the fingerprint results available to the employing member and regulators, consistent with applicable federal laws and FBI and FINRA requirements. *See Notice to Members* 05–39 (May 2005).

[12] Public records include, but are not limited to: general information, such as name and address of individuals; criminal records; bankruptcy records; civil litigations and judgments; liens; and business records.

[13] The requirement to conduct a public records search would be limited to a national search; it would not extend to public records searches in foreign jurisdictions.

[14] FINRA has contracted with BIG to provide competitive pricing to members that are conducting background investigations of applicants, currently at a cost of $10 to $13 per applicant (depending on volume). In general, FINRA does not endorse any

consolidated report of a national public records search, which includes a search of financial and criminal public records. A member may find it necessary to conduct a more in-depth search of an applicant's background depending on the applicant's job function, responsibilities or position at the firm.

FINRA encourages firms to conduct the required public records search prior to filing the initial or transfer Form U4 to avoid the fees associated with filing a Form U4 amendment. In addition, FINRA recognizes that there will on occasion be circumstances beyond a firm's control that prevent completion of the verification process within 30 calendar days after the Form U4 is filed with FINRA. For example, where a firm is relying on fingerprint results for purposes of a criminal public records search, and the FBI determines the fingerprints to be ''illegible'' and requires resubmission of the fingerprints. In such circumstances, the firm's procedures should provide that the verification should be completed as soon as is practical.

FINRA is proposing to implement proposed FINRA Rule 3110(e) on December 1, 2014, which coincides with the implementation date for the consolidated FINRA supervision rules. FINRA will announce the effective date of proposed FINRA Rule 3110(e) in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

III. Proposed FINRA Rule 3110.15

As announced by FINRA on April 24, 2014, to verify against public records whether material financial information has been timely and accurately reported to the CRD system via the Form U4, FINRA is performing a one-time search of specific financial public records, including bankruptcies, judgments and liens, on all registered persons.[15] In addition, as part of this effort and to verify against public records whether material criminal information has been accurately reported to the CRD system via the Form U4, FINRA is performing an ongoing search of specific criminal public records on a risk-based basis and on any registered person who has not been fingerprinted within the past five years. FINRA is using one or more national information providers in the conduct of these reviews. The reviews are performed against readily available, online public records.

In the course of these reviews, if FINRA identifies instances where required information has not been reported to the CRD system via the Form U4, FINRA contacts the firm and asks that the information be reported or that the firm provide an explanation as to why the information is not reportable. If the firm reports the information on the Form U4, FINRA reviews the information and assesses a Disclosure Processing Fee.[16] If the information has not been reported in a timely manner, FINRA also assesses a Late Disclosure Fee.[17]

However, FINRA is proposing to add Supplementary Material .15 to FINRA Rule 3110 to establish a temporary program that will issue a refund to members of Late Disclosure Fees assessed for the late filing of responses to Form U4 Question 14M (unsatisfied judgments or liens) if the following conditions are met: (1) The Form U4 amendment is filed between April 24, 2014 and March 31, 2015; (2) the judgment or lien is under $5,000 and more than five years old (from the date the judgment or lien is filed with a court as reported on Form U4 Judgment/Lien DRP, Question 4); and (3) the registered person was not employed by, or otherwise associated with, the firm filing the amended Form U4 on the date the judgment or lien was filed with the court. FINRA believes that such a refund would provide members with an additional incentive to report information relating to unsatisfied judgments or liens that are older and of a less significant amount, and it would save FINRA the time and resources expended in contacting firms and requesting that such information be reported. Firms would still be charged a Disclosure Processing Fee ($110.00) for filing amended Form U4 disclosure information.

As noted above, proposed FINRA Rule 3110.15 has a retroactive effective date of April 24, 2014, and it will automatically sunset on March 31, 2015. Members will not be able to use the program after March 31, 2015. FINRA believes that it is appropriate for proposed FINRA Rule 3110.15 to have a retroactive effective date of April 24, 2014 because that is the date that FINRA announced its plan to perform a search of specified public records to verify the accuracy and completeness of specific financial and criminal information reported on the Form U4.

IV. Eliminated Rules

NASD Rule 3010(f) requires an applicant for registration to provide, upon a member's request, a copy of his or her Form U5. There is a corresponding provision in NYSE Rule 345.11. FINRA is proposing to eliminate the requirement because members have electronic access to an applicant's Form U5 through the CRD system.

FINRA also is proposing to delete NYSE Rule 345.11 and NYSE Rule Interpretation 345.11/01 and/02 in their entirety as they are substantially similar to proposed FINRA Rule 3110(e), addressed by other rules[18] or otherwise rendered obsolete by the proposed approach reflected in FINRA Rule 3110(e).

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[19] 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 streamline and clarify members' obligations relating to background investigations, which will, in turn, improve members' compliance efforts. Further, the proposed rule change's requirement to adopt written procedures to verify the accuracy and completeness of the information contained in an applicant's Form U4, including the requirement to conduct a public records search, will enhance the accuracy of the information in the CRD system and ultimately in BrokerCheck, which is critical from both a regulatory and an investor protection standpoint. In addition, FINRA believes that the proposed rule change to establish a temporary program under FINRA Rule 3110.15 that will issue a refund to members of Late Disclosure Fees would incentivize members to report information relating to unsatisfied judgments or liens that are older and of a less significant amount and would save FINRA the time and regulatory resources expended in

particular third-party service and a firm's use of BIG's services, or the services of any other specific provider, would not be deemed to be a safe harbor by FINRA.

[15] *See* FINRA Board Approves Amendment to Supervision Rule Requiring Firms to Conduct Background Checks on Registration Applicants, FINRA News Release, April 24, 2014, *http://www.finra.org/Newsroom/NewsReleases/2014/P493588.*

[16] The Disclosure Processing Fee is $110 for filing amended Form U4 disclosure information.

[17] The Late Disclosure Fee is $100 for the first day a form filing is late and $25 for each subsequent day, up to a maximum of $1,575.

[18] FINRA is not proposing to incorporate the requirement of NYSE Rule 345.11 to verify the information contained in the employment questionnaire or application of persons who are not required to be registered because this requirement is redundant of SEA Rule 17a–3(a)(12)(i).

[19] 15 U.S.C. 78*o*–3(b)(6).

contacting firms and requesting that such information be reported.

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 notes that the proposed rule change transfers requirements from NASD Rule 3010(e), NYSE Rule 345.11 and NYSE Rule Interpretation 345.11/01 and/02 unchanged into the Consolidated Rulebook and, as such, those transferred requirements do not impose any new burdens for members that are already subject to the current rules.

The proposed rule change would require members to adopt written procedures that are reasonably designed to verify the accuracy and completeness of the information contained in an applicant's Form U4 no later than 30 calendar days after the form is filed with FINRA, including, at a minimum, procedures to conduct (either directly or through a third-party service provider) a search of reasonably available public records to verify the accuracy and completeness of the information.

FINRA expects that firms already have a review process in place to verify the information contained in the Form U4 for applicants for registration because currently the person signing the form on behalf of the firm must certify that he or she has taken appropriate steps to verify the accuracy and completeness of the information contained in and with that form. Therefore, the requirement to adopt written procedures that are reasonably designed to verify the accuracy and completeness of the information contained in an applicant's Form U4 should not create an unreasonable burden for members.

With respect to the requirement to conduct a public records search, FINRA is aware that many of the large and mid-size firms already have a review process in place that requires a search of public records,[20] and as a result the proposed rule change would not impose significant burdens on these firms. Further, FINRA does not believe that this requirement would be unduly burdensome for members given the availability of online access to public records databases and the relatively low cost of hiring a third-party service provider to conduct such a search. However, some members would likely incur new costs to comply with the proposed requirement.

FINRA is aware that many information providers, including the major national credit reporting agencies, provide such public records search services. For instance, as noted above, FINRA has contracted with BIG to provide competitive pricing to members currently at a cost of $10 to $13 per applicant (depending on volume) for a public records search. FINRA is providing two sample cost estimates for large, mid-size and small firms[21] using the services of providers such as BIG; one based on the annual average number of applicants for registration, and the other based on the annual average number of pre-hire requests.

FINRA estimates that there are approximately 126,800 applicants for registration each year (based upon the average from the last four years). FINRA estimates that 75 percent of these applicants (approximately 95,100) are from 172 large firms and that 10 percent of these applicants (approximately 12,700) are from 205 mid-size firms. FINRA is aware that many of these large and mid-size firms already have a review process in place that requires a public records search, and as a result the proposed rule change would not impose significant burdens on these firms. FINRA estimates that the remaining 15 percent of applicants (approximately 19,000) are from 2,900 small firms. Based on the per firm average of applicants for registration with large, medium and small firms, FINRA estimates that the average cost of complying with the requirement would be in the range of: (1) $5,529 to $7,188 per year for large firms; (2) $620 to $805 per year for mid-size firms; and (3) $66 to $85 per year for small firms.

FINRA estimates that there are approximately 219,000 pre-hire search requests on the CRD system each year (based upon the average from the last four years). FINRA estimates that 85 percent of the pre-hire checks (approximately 186,400) are from 172 large firms and that 7.5 percent of the pre-hire checks (approximately 16,400) are from 205 mid-size firms. The remaining 7.5 percent (approximately 16,400) are from 1,855 small firms. FINRA notes that these pre-hire check estimates are based on the voluntary checks firms conduct on the CRD system, which are free of charge, and are not the same as the public records search discussed in the proposed rule change. However, to the extent that the number of voluntary pre-hire checks is informative of the anticipated number of public record searches, FINRA estimates that the average annual cost of complying with the requirement would be in the range of: (1) $10,837 to $14,088 per firm for large firms; (2) $800 to $1,040 per firm for mid-size firms; and (3) $88 to $115 per firm for small firms.

FINRA understands that these costs will vary significantly depending on the size of a firm and its registration activity in any given year. In addition, FINRA notes that, in some instances, a public records search may uncover matters that might require further investigation for which the member may incur additional costs.

With respect to the temporary program under proposed FINRA Rule 3110.15, FINRA notes that members currently are required to verify the accuracy and completeness of the information contained in the Form U4 and to amend the form as necessary. The temporary program would encourage members to comply with their existing obligations and allow them to receive a refund of Late Disclosure Fees if the conditions specified in proposed FINRA Rule 3110.15 are satisfied. As such, FINRA does not believe that the temporary program will result in any burden on members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (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,

[20] As defined in the FINRA By-Laws, a ''large firm'' is a member that has 500 or more registered persons and a ''mid-size firm'' is a member that has at least 151 and no more than 499 registered persons. *See* FINRA By-Laws, Article I(y) and (cc).

[21] As defined in the FINRA By-Laws, a ''small firm'' is a member that has at least 1 and no more than 150 registered persons. *See* FINRA By-Laws, Article I(ww).

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–2014–038 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–2014–038. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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–2014–038 and should be submitted on or before October 24, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23567 Filed 10–2–14; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Nudg Media Inc.; Order of Suspension of Trading

October 1, 2014.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Nudg Media Inc. (''Nudg'') because of questions regarding the accuracy of assertions by Nudg and by others, in press releases to investors concerning, among other things: the company's assets and business plan. Nudg Media Inc. is a Nevada corporation with its principal place of business located in Carson City, Nevada. Its stock is quoted on OTC Link, operated by OTC Markets Group Inc., under the ticker: NDDG.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, on October 1, 2014 through 11:59 p.m. EDT, on October 14, 2014.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–23747 Filed 10–1–14; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8896]

Culturally Significant Objects Imported for Exhibition

Determinations: ''The Forever Now: Contemporary Painting in an Atemporal World''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''The Forever Now: Contemporary Painting in an Atemporal World,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, New York, from on or about December 14, 2014, until on or about April 5, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 23, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–23628 Filed 10–2–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 8894]

Culturally Significant Objects Imported for Exhibition Determinations: ''V.S. Gaitonde: Painting as Process, Painting as Life'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''V.S. Gaitonde: Painting as Process, Painting as Life,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Solomon R. Guggenheim Museum, New York, NY, from on or about October 24, 2014, until on or about February 11, 2015, and at possible

additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 29, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–23629 Filed 10–2–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8895]

Culturally Significant Object Imported for Exhibition Determinations: ''Charles Ray: Sculpture, 1997–2014''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition ''Charles Ray: Sculpture, 1997–2014,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Art Institute of Chicago, Chicago, IL, from on or about May 17, 2015, until on or about October 4, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 24, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–23627 Filed 10–2–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 8897]

Persons on Whom Sanctions Have Been Imposed Under the Iran Sanctions Act of 1996 and the Iran Freedom and Counter-Proliferation Act of 2012

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Secretary of State has determined, pursuant to authority delegated by Presidential Memorandum of October 9, 2012 (the ''ISA Delegation Memorandum''), that the following persons have engaged in sanctionable activity described in section 5(a)(6) of the Iran Sanctions Act of 1996 (Pub. L. 104–172) (50 U.S.C. 1701 note) (''ISA''), as amended, and that certain sanctions are imposed as a result: Dettin SpA.

The Secretary of State has also determined, pursuant to authority delegated by Presidential Memorandum of June 3, 2013 (the ''IFCA Delegation Memorandum''), that the following persons have engaged in sanctionable activity described in section 1244 of the Iran Freedom and Counter-Proliferation Act of 2012 (Pub. L. 112–239) (''IFCA''), and that certain sanctions are imposed as a result: Goldentex FZE.

DATES: *Effective Date:* These sanctions actions are effective on August 28, 2014.

FOR FURTHER INFORMATION CONTACT: On general issues: Paul Pavwoski, Office of Economic Sanctions Policy and Implementation, Department of State, Telephone: (202) 647–8836.

SUPPLEMENTARY INFORMATION: Pursuant to section 5(a)(6) of ISA and the ISA Delegation Memorandum, the Secretary determined that the following sanctions, as described in section 6 of ISA, are to be imposed on Dettin SpA:

1. Procurement sanction. The United States Government shall not procure, or enter into any contract for the procurement of, and goods or services from Dettin SpA.

2. Export-Import Bank assistance for exports. The Export-Import Bank of the United States shall not give approval to the issuance of any guarantee, insurance, extension of credit, or participation in the extension of credit in connection with the export of any goods or services to Dettin SpA.

3. Banking transactions. Any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of Dettin SpA, shall be prohibited.

4. Property transactions. It shall be prohibited to:

a. Acquire, hold, withhold, use, transfer, withdraw, transport, import, or export any property that is subject to the jurisdiction of the United States and with respect to which Dettin SpA has any interest;

b. Deal in or exercise any right, power, or privilege with respect to such property; or

c. Conduct any transactions involving such property.

5. Foreign Exchange. Any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which Dettin SpA has any interest, shall be prohibited.

If the Secretary determines that a person has engaged in sanctionable activity under Section 1244(d) of IFCA, the Secretary is required to impose 5 of the 12 sanctions provided for in Section 6 of ISA. Pursuant to section 1244(d) of IFCA and the IFCA Delegation Memorandum, the Secretary determined that the following sanctions as described in section 6 of ISA are to be imposed on Goldentex FZE:

1. Ban on Investment in Equity or Debt of Sanctioned Person. Investment by U.S. persons in the debt or equity of Goldentex FZE shall be prohibited.

2. Loans from United States Financial Institutions. U.S. financial institutions shall be prohibited from making loans or providing credits to Goldentex FZE totaling more than $10,000,000 in any 12-month period unless Goldentex FZE is engaged in activities to relieve human suffering and the loans or credits are provided for such activities.

3. Banking Transactions. Any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of Goldentex FZE, shall be prohibited.

4. Property Transactions. It shall be prohibited to:

a. Acquire, hold, withhold, use, transfer, withdraw, transport, import, or export any property that is subject to the jurisdiction of the United States and with respect to which Goldentex FZE has any interest;

b. Deal in or exercise any right, power, or privilege with respect to such property; or

c. Conduct any transactions involving such property.

5. Foreign Exchange Transactions. Transactions in foreign exchange that are subject to the jurisdiction of the United States in which Goldentex FZE has any interest are prohibited.

The sanctions described above with respect to Dettin SpA and Goldentex FZE shall remain in effect until otherwise directed pursuant to the provisions of ISA, IFCA, or other applicable authority. Pursuant to the authority delegated to the Secretary of State in the ISA and IFCA Delegation Memoranda, relevant agencies and instrumentalities of the United States Government shall take all appropriate measures within their authority to carry out the provisions of this notice. The Secretary of the Treasury is taking appropriate action to implement the sanctions for which authority has been delegated to the Secretary of the Treasury pursuant to the Delegation Memorandum and Executive Order 13574 of May 23, 2011.

The following constitutes a current list, as of this date, of persons on whom ISA sanctions have been imposed. The particular sanctions imposed on an individual person are identified in the relevant **Federal Register** Notice.

- Belarusneft (see Public Notice 7408, 76 FR 18821, April 5, 2011).
- BimehMarkazi-Central Insurance of Iran (see Public Notice 8268, 76 FR 21183, April 9, 2013).
- Cambis, Dimitris (see Public Notice 8268, 76 FR 21183, April 9, 2013).
- Dettin SpA.
- FAL Oil Company Limited (see Public Notice 7776, 77 FR 4389, Jan. 27, 2012).
- Ferland Company Limited (see Public Notice 8352, 78 FR 35351, June 12, 2013).
- Goldentex FZE.
- Impire Shipping (see Public Notice 8268, 76 FR 21183, April 9, 2013).
- Jam Petrochemical Company (see Public Notice 8352, 78 FR 35351, June 12, 2013).
- Kish Protection and Indemnity (a.k.a. Kish P&I) (see Public Notice 8268, 76 FR 21183, April 9, 2013).
- Kuo Oil (S) Pte. Ltd. (see Public Notice 7776, 77 FR 4389, Jan. 27, 2012).
- NaftiranIntertrade Company (a.k.a. NICO) (see Public Notice 7197, 75 FR 62916, Oct. 13, 2010).
- Niksima Food and Beverage JLT (see Public Notice 8352, 78 FR 35351, June 12, 2013).
- Petrochemical Commercial Company International (a.k.a. PCCI) (see Public Notice 7585, 76 FR 56866, September 14, 2011).
- Petróleos de Venezuela S.A. (a.k.a. PDVSA) (see Public Notice 7585, 76 FR 56866, September 14, 2011).
- Royal Oyster Group (see Public Notice 7585, 76 FR 56866, September 14, 2011).
- Speedy Ship (a.k.a. SPD) (see Public Notice 7585, 76 FR 56866, September 14, 2011).
- Sytrol (see Public Notice 8040, 77 FR 59034, September 25, 2012).
- Zhuhai Zhenrong Company (see Public Notice 7776, 77 FR 4389, Jan. 27, 2012).

Charles H. Rivkin,

Assistant Secretary for Economic and Business Affairs.

[FR Doc. 2014–23626 Filed 10–2–14; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2014–0011–N–18]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below requesting regular review is being forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on June 30, 2014 (79 FR 36860).

DATES: Comments must be submitted on or before November 3, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 25, Washington, DC 20590 (Telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (Telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On June 30, 2014, FRA published a 60-day notice in the **Federal Register** soliciting comments on the ICR for which the agency is seeking OMB approval. *See* 79 FR 36860. The ICR relates to the Emergency Order (EO) issued on May 7, 2014, by the Secretary of Transportation (Docket No. DOT–OST–2014–0067). The EO requires affected railroad carriers to provide certain information to the State Emergency Response Commissions (SERCs) for each State in which they operate individual trains carrying 1 million gallons or more of petroleum crude oil sourced from the Bakken shale formation in the Williston Basin (Bakken crude oil). FRA received one comment in response to its 60-day notice.

On August 29, 2014, FRA received a joint comment from the Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA) (Commenters). The Commenters raised three main points. First, the Commenters assert that the crude oil routing information the EO requires railroads to provide to SERCs is sensitive information from a security perspective and should only be available to persons with a need-to-know the information (e.g., emergency responders and emergency response planners). Second, the Commenters assert that the same information is commercially-sensitive information that should remain confidential and not be publically available. Finally, the Commenters assert that the EO is not serving a useful purpose as the information required by the EO to be provided to the SERCs is already provided to emergency responders through AAR Circular OT–55–N. *See* AAR, ''Circular OT–55–N: Recommended Railroad Operating Practices For Transportation of Hazardous Materials,'' (Aug. 5, 2013) (OT–55). The Commenters specifically suggest that the EO ''be withdrawn because it has resulted in information confidential from security, safety, and business perspectives being made public and because the objective of the emergency order, informing government

officials of the transportation of Bakken crude oil through their jurisdictions, was already being met, and would continue to be met, if the EO is withdrawn.'' AAR and ASLRRA continued:

> The EO requires that railroads make crude oil routing information available to [SERCs]. Specifically, the EO requires that a railroad provide to the SERC in each state in which it operates trains transporting 1,000,000 gallons or more of Bakken crude oil information on the number of such trains traveling per week through each county and the routes over which the trains operate.
>
> While AAR and ASLRRA do not believe it was DOT's intention, the EO resulted in the information required to be disclosed by the EO to be made publicly available. Such a result is hardly a necessary consequence of informing government officials of the transportation of Bakken crude oil through their jurisdictions. Railroads were already informing government officials of the hazardous materials transported through their communities pursuant to AAR's circular governing operating practices for the transportation of hazardous materials, OT–55.[1]

In their comment, AAR and ASLRRA further remarked:

> Unfortunately, in so far as confidentiality is concerned, the result of the EO has proven inconsistent with DOT's intent. Since SERCs in many states have contended they have no choice but to make the routing information public because of the laws governing SERCs, the SERCs have refused to keep crude oil routing information confidential.
>
> The EO is not needed to provide emergency responders with notice that crude oil shipments are being transported through their communities because railroads have been providing that information for many years. OT–55 provides that railroads will give emergency response agencies and planning groups information on the hazardous materials transported through their communities. Class I railroads and short lines have notified communities as provided by OT–55.
>
> For emergency response planning purposes, there is no need to disclose the actual route taken by a crude oil train. Notifying an emergency responder of the hazardous materials transported through the community, including crude oil, is sufficient.
>
> Railroading is a highly competitive business. A railroad's traffic is susceptible to competing railroads and competing modes. As is the case with any company engaged in a competitive business, railroads keep their customers confidential to the extent possible. Forced disclosure of routing information provides a means for competitors to ascertain a railroad's customers and constitutes the disclosure of confidential commercial information.

[1] OT–55 provides that AAR members will provide emergency response agencies or emergency response planning groups with ''commodity flow information covering at a minimum the top 25 hazardous commodities transported through the community in rank order.''

Although DOT and FRA in particular, recognize the Commenters concerns relating to the potential confidentiality of the information required to be provided under the EO, DOT notes that the information does not fall into any of the fifteen categories of Sensitive Security Information (SSI) defined by either DOT or Transportation Security Administration (TSA) regulations. *See* 49 CFR parts 15 and 1520. Further, at this time, DOT finds no basis to conclude that the public disclosure of the information is detrimental to transportation safety. DOT has consulted with the Department of Homeland Security and TSA in making this decision. Accordingly, the Secretary of Transportation has not designated the information as SSI.

The Commenters are correct in that DOT's intent in issuing the EO was not to cause the widespread public disclosure of the information, but rather to ensure that emergency responders have an understanding of the volume and frequency with which Bakken crude oil is transported through their communities so that they can prepare their response plans and resources accordingly. DOT notes that the Commenters do not document any actual harm that has occurred by the public release of the information required to be provided to the States under the EO. That being said, DOT understands that railroads may have an appropriate claim that the information required to be provided to the SERCs constitutes confidential business information, but the merit of such claims may differ by State depending on each State's open records and sunshine laws. For these reasons, FRA concludes that the information required to be provided to the SERCs under the EO is neither security-sensitive nor commercially-sensitive information that is protected by Federal law.

With regard to the Commenters' assertion that the EO is not serving a useful purpose as the information required by the EO to be provided to the States is already available to emergency responders through OT–55, FRA notes that there are important distinctions between the information required to be provided by railroads under the EO and the nature and content of the information provided pursuant to OT–55. First, the railroad's sharing of information contemplated by OT–55 is only voluntary. Second, the railroad's voluntary sharing of information under OT–55 is only upon written request of emergency response or emergency planning groups. Third, the information voluntarily shared pursuant to OT–55 is ''commodity flow information'' covering ''the top 25 hazardous commodities transported through the community in rank order.'' Large quantities of Bakken crude oil in single trains may or may not be part of this top-25 commodity ranking in any given community. In contrast, by mandating in the EO that railroads provide the identified information on the transportation of large quantities of Bakken crude oil to States, the EO helps ensure that local emergency responders have access to that information. Further, the information that the EO mandates railroads to provide to States is very specific, limited to one commodity (Bakken crude oil), more detailed than the information voluntarily shared pursuant to OT–55, and specifically designed to ensure that local emergency responders are provided sufficient information to confirm that they have an understanding of the volume, route, and frequency with which Bakken crude oil is transported through their jurisdictions so that they can prepare emergency response plans and resources accordingly. For these reasons, FRA strongly disagrees with the Commenters' assertion that the EO is not serving a useful purpose.

Finally, DOT notes that a pending Pipeline and Hazardous Materials Safety Administration Notice of Proposed Rulemaking (NPRM) proposes to codify into Federal regulations the terms of the EO. *See* 79 FR 45016 (Aug. 1, 2014). The public comment period on this NPRM is scheduled to close on September 30, 2014. It would be premature to change the terms of the EO now and prohibit the disclosure of the specified information to SERCs before those terms undergo full public scrutiny and comment through the rulemaking process.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the ICR and the expected burden. The revised request is being submitted for clearance by OMB as required by the PRA.

Title: Secretary of Transportation Emergency Order Docket No. OST–2014–0067.

OMB Control Number: 2130–0604.

Abstract: On May 7, 2014, the Secretary of Transportation issued Emergency Order Docket No. DOT–OST–2014–0067 (EO), requiring affected railroad carriers to provide certain information to the State Emergency Response Commissions (SERCs) for each State in which their trains carrying 1 million gallons or more of Bakken crude oil travel. This EO is available through the Department's public docket system at *www.regulations.gov,* under Docket No. DOT–OST–2014–0067. The EO took effect immediately upon issuance, although affected railroads were permitted 30 days to provide the required information to the SERCs. The EO is the DOT's direct and proactive response to a recent series of train accidents involving the transportation of petroleum crude oil, a hazardous material the transportation of which is regulated by the DOT. The most recent accident occurred on April 30, 2014, when a train transporting petroleum crude oil derailed in Lynchburg, Virginia and released approximately 30,000 gallons of its contents into the James River. Further, the EO explains that, with the rising demand for rail transportation of petroleum crude oil throughout the United States, the risk of rail incidents has increased commensurate with the increase in the volume of the material shipped and that there have been several significant derailments in both the U.S. and Canada over the last several months causing deaths and property and environmental damage that involved petroleum crude oil. DOT emergency orders are rare and the EO itself describes the most recent accidents and circumstances leading the agency to issue the EO. The collection of information included under this EO is aimed at ensuring that railroads that transport in a single train a large quantity of petroleum crude oil (1 million gallons or more), particularly crude oil from the Bakken shale formation in the Williston Basin, provide certain information to the relevant SERCs in each State in which the railroad operates such trains. Ensuring that railroads provide this information to SERCs is critical to ensuring that local and State emergency responders are aware of the large quantities of crude oil that are being transported through their jurisdictions and are prepared to respond to accidents involving such trains should they occur.

Affected Public: Businesses (Railroads).

Form(s): N/A.

Annual Estimated Burden: 3,778 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov.*

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on September 29, 2014.

Erin McCartney,

Acting Chief Financial Officer.

[FR Doc. 2014–23511 Filed 10–2–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2014 0125]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel CIAO; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 3, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2014–0125. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CIAO is:

Intended Commercial Use of Vessel: ''yacht charters''

Geographic Region: Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana, Texas

The complete application is given in DOT docket MARAD–2014–0125 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: September 18, 2014.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2014–23527 Filed 10–2–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 30, 2014.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before November 3, 2014 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8141, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Office of Foreign Assets Control

OMB Number: 1505–0198.

Type of Review: Extension of a currently approved collection.

Title: Requirement to Report Information About the Shipment of Rough Diamonds.

Abstract: This information collection is contained in 31 CFR 592.301 and 592.502. The regulations set forth reporting requirements for persons who import rough diamonds into the United States or export rough diamonds from the U.S.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden Hours: 1,750.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2014–23583 Filed 10–2–14; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0677]

Proposed Information Collection (Contract for Training and Employment) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), 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 extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to ensure contracts between VA and training facilities/vendors are consistent with the Federal Procurement Regulations.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 2, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0677'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

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: Contract for Training and Employment (Chapter 31, Title 38 U.S. Code), VA Form 28–1903.

OMB Control Number: 2900–0677.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1903 is used to standardize contracts agreements between VA and training facilities/vendors providing vocational rehabilitation training and employment to veterans. VA uses the data collected to ensure that Veterans are receiving training and employment as agreed in the contract.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 1,200 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,200.

Dated: September 29, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23514 Filed 10–2–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0636]

Proposed Information Collection (Accelerated Payment Verification of Completion Letter) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), 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 currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine whether a claimant received his or her accelerated payment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 2, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0636'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

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: Accelerated Payment Verification of Completion Letter, VA Form 22–0840.

OMB Control Number: 2900–0636.

Type of Review: Revision of a currently approved collection.

Abstract: Claimants electing to receive an accelerate payment for educational assistance allowance must certify they received such payment and how the payment was used. The data collected is used to determine the claimant's entitlement to accelerated payment.

Affected Public: Individuals or households.

Estimated Annual Burden: 9 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 108.

Dated: September 29, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–23512 Filed 10–2–14; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 79 Friday,
No. 192 October 3, 2014

Part II

Commodity Futures Trading Commission

17 CFR Parts 23 and 140
Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 23 and 140

RIN 3038–AC97

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule; advance notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing regulations to implement section 4s(e) of the Commodity Exchange Act (''CEA''), as added by section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). This provision requires the Commission to adopt initial and variation margin requirements for certain swap dealers (''SDs'') and major swap participants (''MSPs''). The proposed rules would establish initial and variation margin requirements for SDs and MSPs but would not require SDs and MSPs to collect margin from non-financial end users. In this release, the Commission is also issuing an Advance Notice of Proposed Rulemaking requesting public comment on the cross-border application of such margin requirements. The Commission is not proposing rules on this topic at this time. It is seeking public comment on several potential alternative approaches.

DATES: Comments must be received on or before December 2, 2014.

ADDRESSES: You may submit comments, identified by RIN 3038–AC97 and Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, by any of the following methods:

- Agency Web site, via its Comments Online process at *http://comments.cftc.gov*. Follow the instructions for submitting comments through the Web site.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Please submit your comments using only one of these methods.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov*. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in § 145.9 of the Commission's regulations, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted, or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Deputy Director, Division of Clearing and Risk, 202–418–5480, *jlawton@cftc.gov*; Thomas J. Smith, Deputy Director, Division of Swap Dealer and Intermediary Oversight, 202–418–5495, *tsmith@cftc.gov*; Rafael Martinez, Financial Risk Analyst, Division of Swap Dealer and Intermediary Oversight, 202–418–5462, *rmartinez@cftc.gov*; Francis Kuo, Attorney, Division of Swap Dealer and Intermediary Oversight, 202–418–5695, *fkuo@cftc.gov*; or Stephen A. Kane, Research Economist, Office of Chief Economist, 202–418–5911, *skane@cftc.gov*; Commodity Futures Trading Commission, 1155 21st Street NW., Washington DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

On July 21, 2010, President Obama signed the Dodd-Frank Act.[1] Title VII of the Dodd-Frank Act amended the CEA [2] to establish a comprehensive regulatory framework designed to reduce risk, to increase transparency, and to promote market integrity within the financial system by, among other things: (1) Providing for the registration and regulation of SDs and MSPs; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight.

Section 731 of the Dodd-Frank Act added a new section 4s to the CEA setting forth various requirements for SDs and MSPs. Section 4s(e) mandates the adoption of rules establishing margin requirements for SDs and MSPs.[3] Each SD and MSP for which there is a Prudential Regulator, as defined below, must meet margin requirements established by the applicable Prudential Regulator, and each SD and MSP for which there is no Prudential Regulator must comply with the Commission's regulations governing margin.

The term Prudential Regulator is defined in section 1a(39) of the CEA, as amended by Section 721 of the Dodd-Frank Act. This definition includes the Federal Reserve Board (''FRB''); the Office of the Comptroller of the Currency (''OCC''); the Federal Deposit Insurance Corporation (''FDIC''); the Farm Credit Administration; and the Federal Housing Finance Agency.

The definition specifies the entities for which these agencies act as Prudential Regulators. These consist generally of federally insured deposit institutions, farm credit banks, federal home loan banks, the Federal Home Loan Mortgage Corporation, and the Federal National Mortgage Association. The FRB is the Prudential Regulator under section 4s not only for certain banks, but also for bank holding companies, certain foreign banks treated as bank holding companies, and certain subsidiaries of these bank holding companies and foreign banks. The FRB is not, however, the Prudential Regulator for nonbank subsidiaries of bank holding companies, some of which are required to be registered with the Commission as SDs or MSPs. In general, therefore, the Commission is required to establish margin requirements for all registered SDs and MSPs that are not subject to a Prudential Regulator. These include, among others, nonbank subsidiaries of bank holding companies, as well as certain foreign SDs and MSPs.

Specifically, section 4s(e)(1)(B) of the CEA provides that each registered SD

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] 7 U.S.C. 1 *et seq.*

[3] Section 4s(e) also directs the Commission to adopt capital requirements for SDs and MSPs. The Commission proposed capital rules in 2011. Capital Requirements for Swap Dealers and Major Swap Participants, 76 FR 27802 (May 12, 2011). The Commission will address capital requirements in a separate release.

and MSP for which there is not a Prudential Regulator shall meet such minimum capital requirements and minimum initial margin and variation margin requirements as the Commission shall by rule or regulation prescribe.

Section 4s(e)(2)(B) provides that the Commission shall adopt rules for SDs and MSPs, with respect to their activities as an SD or an MSP, for which there is not a Prudential Regulator imposing (i) capital requirements and (ii) both initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization (''DCO'').

Section 4s(e)(3)(A) provides that to offset the greater risk to the SD or MSP and the financial system arising from the use of swaps that are not cleared, the requirements imposed under section 4s(e)(2) shall (i) help ensure the safety and soundness of the SD or MSP and (ii) be appropriate for the risk associated with the non-cleared swaps.

Section 4s(e)(3)(C) provides, in pertinent part, that in prescribing margin requirements the Prudential Regulator and the Commission shall permit the use of noncash collateral the Prudential Regulator or the Commission determines to be consistent with (i) preserving the financial integrity of markets trading swaps and (ii) preserving the stability of the United States financial system.

Section 4s(e)(3)(D)(i) provides that the Prudential Regulators, the Commission, and the Securities and Exchange Commission (''SEC'') shall periodically (but not less frequently than annually) consult on minimum capital requirements and minimum initial and variation margin requirements.

Section 4s(e)(3)(D)(ii) provides that the Prudential Regulators, Commission and SEC shall, to the maximum extent practicable, establish and maintain comparable minimum capital and minimum initial and variation margin requirements, including the use of noncash collateral, for SDs and MSPs.

B. Previous Proposal

Following extensive consultation and coordination with the Prudential Regulators, the Commission published proposed rules for public comment in 2011.[4] The Prudential Regulators published substantially similar rules two weeks later.[5]

The Commission received 102 comment letters. The Prudential Regulators received a comparable number. The commenters included financial services industry associations, agricultural industry associations, energy industry associations, insurance industry associations, banks, brokerage firms, investment managers, insurance companies, pension funds, commercial end users, law firms, public interest organizations, and other members of the public. The commenters addressed numerous topics including applicability of the rules to certain products, applicability to certain market participants, margin calculation methodologies, two-way vs. one-way margin, margin thresholds, permissible collateral, use of independent custodians, rehypothecation of collateral, and harmonization with other regulators.

The Commission has taken the comments it received into consideration in developing the further proposal contained herein. This proposal differs in a number of material ways from the previous proposal[6] and the Commission has determined that it is appropriate to issue a new request for comment. The Prudential Regulators have also decided to issue a new request for comment. The public is invited to comment on any aspect of the current proposal.

C. International Standards

While the comments on the 2011 proposal were being reviewed, regulatory authorities around the world determined that global harmonization of margin standards was an important goal. The CFTC and the Prudential Regulators decided to hold their rulemakings in abeyance pending completion of the international efforts.

In October 2011, the Basel Committee on Banking Supervision (''BCBS'') and the International Organization of Securities Commissions (''IOSCO''), in consultation with the Committee on Payment and Settlement Systems (''CPSS'') and the Committee on Global Financial Systems (''CGFS''), formed a working group to develop international standards for margin requirements for uncleared swaps. Representatives of more than 20 regulatory authorities participated. From the United States, the CFTC, the FDIC, the FRB, the OCC, the Federal Reserve Bank of New York, and the SEC were represented.

In July 2012, the working group published a proposal for public comment.[7] In addition, the group conducted a Quantitative Impact Study (''QIS'') to assess the potential liquidity and other quantitative impacts associated with margin requirements.[8]

After consideration of the comments on the proposal and the results of the QIS, the group published a near-final proposal in February 2013 and requested comment on several specific issues.[9] The group considered the additional comments in finalizing the recommendations set out in the report.

The final report was issued in September 2013.[10] This report (the ''2013 international framework'') articulates eight key principles for non-cleared derivatives margin rules, which are described below. These principles represent the minimum standards approved by BCBS and IOSCO and recommended to the regulatory authorities in member jurisdictions of these organizations.

1. Appropriate Margining Practices Should be in Place With Respect to all Non-Cleared Derivative Transactions

The 2013 international framework recommends that appropriate margining practices be in place with respect to all derivative transactions that are not cleared by central counterparties (''CCPs''). The 2013 international framework does not include a margin requirement for physically settled foreign exchange (''FX'') forwards and swaps. The framework also would not apply initial margin requirements to the fixed physically-settled FX component of cross-currency swaps.

2. Financial Firms and Systemically Important Nonfinancial Entities (Covered Entities) Must Exchange Initial and Variation Margin

The 2013 international framework recommends bilateral exchange of initial and variation margin for non-cleared derivatives between covered entities. The precise definition of ''covered entities'' is to be determined by each national regulator, but in general should include financial firms and systemically important non-financial entities. Sovereigns, central banks, certain multilateral development banks, the Bank for International

[4] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 76 FR 23732 (April 28, 2011).

[5] Margin and Capital Requirements for Covered Swap Entities, 76 FR 27564 (May 11, 2011).

[6] These include, among others, the definition of financial end user, the definition of material swaps exposure, the requirement for two-way margin between SDs and financial end users, and the list of eligible collateral for initial margin.

[7] BCBS/IOSCO, Consultative Document, Margin requirements for non-centrally cleared derivatives (July 2012).

[8] BCBS/IOSCO, Quantitative Impact Study, Margin requirements for non-centrally cleared derivatives (November 2012).

[9] BCBS/IOSCO, Consultative Document, Margin requirements for non-centrally cleared derivatives (February 2013).

[10] BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (September 2013) (''BCBS/IOSCO Report'').

Settlements (BIS), and non-systemic, non-financial firms are not included as covered entities.

Under the 2013 international framework, all covered entities that engage in non-cleared derivatives should exchange, on a bilateral basis, the full amount of variation margin with a zero threshold on a regular basis (*e.g.,* daily). All covered entities are also expected to exchange, on a bilateral basis, initial margin with a threshold not to exceed €50 million. The threshold applies on a consolidated group, rather than legal entity, basis. In addition, and in light of the permitted initial margin threshold, the 2013 international framework recommends that entities with a level of non-cleared derivative activity of €8 billion notional or more would be subject to initial margin requirements.

3. The Methodologies for Calculating Initial and Variation Margin Should (i) Be Consistent Across Covered Entities, and (ii) Ensure That All Counterparty Risk Exposures Are Covered With a High Degree of Confidence

The 2013 international framework states that the potential future exposure of a non-cleared derivative should reflect an estimate of an increase in the value of the instrument that is consistent with a one-tailed 99% confidence level over a 10-day horizon (or longer, if variation margin is not collected on a daily basis), based on historical data that incorporates a period of significant financial stress.

The 2013 international framework permits the amount of initial margin to be calculated by reference to internal models approved by the relevant national regulator or a standardized margin schedule, but covered entities should not ''cherry pick'' between the two calculation methods. Models may allow for conceptually sound and empirically demonstrable portfolio risk offsets where there is an enforceable netting agreement in effect. However, portfolio risk offsets may only be recognized within, and not across, certain well-defined asset classes: credit, equity, interest rates and foreign exchange, and commodities. A covered entity using the standardized margin schedule may adjust the gross initial margin amount (notional exposure multiplied by the relevant percentage in the table) by a ''net-to-gross ratio,'' which is also used in the bank counterparty credit risk capital rules to reflect a degree of netting of derivative positions that are subject to an enforceable netting agreement.

4. To Ensure That Assets Collected as Collateral Can Be Liquidated in a Reasonable Amount of Time To Generate Proceeds That Could Sufficiently Protect Covered Entities From Losses in the Event of a Counterparty Default, These Assets Should Be Highly Liquid and Should, After Accounting for an Appropriate Haircut, be Able To Hold Their Value in a Time of Financial Stress

The 2013 international framework recommends that national supervisors develop a definitive list of eligible collateral assets. The 2013 international framework includes examples of permissible collateral types, provides a schedule of standardized haircuts, and indicates that model-based haircuts may be appropriate. In the event that a dispute arises over the value of eligible collateral, the 2013 international framework provides that both parties should make all necessary and appropriate efforts, including timely initiation of dispute resolution protocols, to resolve the dispute and exchange any required margin in a timely fashion.

5. Initial Margin Should be Exchanged on a Gross Basis and Held in Such a Way as to Ensure That (i) the Margin Collected Is Immediately Available to the Collecting Party in the Event of the Counterparty's Default, and (ii) the Collected Margin Is Subject to Arrangements That Fully Protect the Posting Party

The 2013 international framework provides that collateral collected as initial margin from a ''customer'' (defined as a ''buy-side financial firm'') should be segregated from the initial margin collector's proprietary assets. The initial margin collector also should give the customer the option to individually segregate its initial margin from other customers' margin. In very specific circumstances, the initial margin collector may use margin provided by the customer to hedge the risks associated with the customer's positions with a third party. To the extent that the customer consents to rehypothecation, it should be permitted only where applicable insolvency law gives the customer protection from risk of loss of initial margin in instances where either or both of the initial margin collector and the third party become insolvent. Where a customer has consented to rehypothecation and adequate legal safeguards are in place, the margin collector and the third party to which customer collateral is rehypothecated should comply with additional restrictions detailed in the 2013 international framework, including a prohibition on any further rehypothecation of the customer's collateral by the third party.

6. Requirements for Transactions Between Affiliates Are Left to the National Supervisors

The 2013 international framework recommends that national supervisors establish margin requirements for transactions between affiliates as appropriate in a manner consistent with each jurisdiction's legal and regulatory framework.

7. Requirements for Margining Non-Cleared Derivatives Should Be Consistent and Non-Duplicative Across Jurisdictions

Under the 2013 international framework, home-country supervisors may allow a covered entity to comply with a host-country's margin regime if the host-country margin regime is consistent with the 2013 international framework. A branch may be subject to the margin requirements of either the headquarters' jurisdiction or the host country.

8. Margin Requirements Should Be Phased in Over an Appropriate Period of Time

The 2013 international framework phases in margin requirements between December 2015 and December 2019. Covered entities should begin exchanging variation margin by December 1, 2015. The date on which a covered entity should begin to exchange initial margin with a counterparty depends on the notional amount of non-cleared derivatives (including physically settled FX forwards and swaps) entered into both by its consolidated corporate group and by the counterparty's consolidated corporate group.

Currency denomination. The 2013 international framework recommends specific quantitative levels for several requirements such as the level of notional derivative exposure that results in an entity being subject to the margin requirements (€8 billion), permitted initial margin thresholds (€50 million), and minimum transfer amounts (€500,000). In the 2013 international framework, all such amounts are denominated in Euros. In this proposal all such amounts are denominated in U.S. dollars. The Commission is aware that, over time, amounts that are denominated in different currencies in different jurisdictions may fluctuate relative to one another due to changes in exchange rates.

The Commission seeks comment on whether and how fluctuations resulting from exchange rate movements should be addressed. In particular, should these amounts be expressed in terms of a single currency in all jurisdictions to prevent such fluctuations? Should the amounts be adjusted over time if and when exchange rate movements necessitate realignment? Are there other approaches to deal with fluctuations resulting from significant exchange rate movements? Are there other issues that should be considered in connection to the effects of fluctuating exchange rates?

II. Proposed Margin Regulations

A. Introduction

During the financial crisis of 2008–2009, DCOs met all their obligations without any financial support from the government. By contrast, significant sums were expended by governmental entities as the result of losses incurred in connection with uncleared swaps. For example, a unit of American International Group (''AIG'') entered into many credit default swaps and did not post initial margin or regularly pay variation margin on these positions.[11] AIG was unable to meet its obligations and the Federal Reserve and the Department of the Treasury expended large sums of money to meet these obligations.[12]

A key reason for this difference in the performance of cleared and uncleared swaps is that DCOs use variation margin and initial margin as the centerpiece of their risk management programs while these tools often were not universally used in connection with uncleared swaps. Consequently, in designing the proposed margin rules for uncleared swaps, the Commission has built upon the sound practices for risk management employed by central counterparties for decades.

Variation margin serves as a mechanism for periodically recognizing changes in the value of open positions and reducing unrealized losses to zero. Open positions are marked to their current market value each day and funds are transferred between the parties to reflect any change in value since the previous time the positions were marked. This process prevents losses from accumulating over time and thereby reduces both the chance of default and the size of any default should one occur.

Initial margin serves as a performance bond against potential future losses. If a party fails to meet its obligation to pay variation margin, resulting in a default, the other party may use initial margin to cover some or all of any loss. Because the payment of variation margin prevents losses from compounding over an extended period of time, initial margin only needs to cover any additional losses that might accrue between the previous time that variation margin was paid and the time that the position is liquidated.

Well-designed margin systems protect both parties to a trade as well as the overall financial system. They serve both as a check on risk-taking that might exceed a party's financial capacity and as a resource that can limit losses when there is a failure by a party to meet its obligations.

The statutory provisions cited above reflect Congressional recognition that (i) margin is an essential risk-management tool and (ii) uncleared swaps pose greater risks than cleared swaps. As discussed further below, many commenters expressed concern that the imposition of margin requirements on uncleared swaps will be very costly for SDs and MSPs.[13] However, margin has been, and will continue to be, required for all cleared products. Given the Congressional reference to the ''greater risk'' of uncleared swaps and the requirement that margin for such swaps ''be appropriate for the risk,'' the Commission believes that establishing margin requirements for uncleared swaps that are at least as stringent as those for cleared swaps is necessary to fulfill the statutory mandate. Within these statutory bounds the Commission has endeavored to limit costs appropriately, as detailed further below.

The discussion below addresses: (i) The products covered by the proposed rules; (ii) the market participants covered by the proposed rules; (iii); the nature and timing of the margin obligations; (iv) the methods of calculating initial margin; (v) the methods of calculating variation margin; (vi) permissible forms of margin; (vii) custodial arrangements; (viii) documentation requirements; (ix) the implementation schedule; and (x) advance notice of proposed rulemaking on the cross-border application of the rules.

In developing the proposed rules, the Commission staff worked closely with the staff of the Prudential Regulators.[14] In most respects, the proposed rules would establish a similar framework for margin requirements as the Prudential Regulators' proposal. Key differences are noted in the discussion below.

The proposed rules are consistent with the 2013 international framework. In some instances, as contemplated in the framework, the proposed rules provide more detail than the framework. In a few other instances, the proposed rules are stricter than the framework. Any such variations from the framework are noted in the discussion below.

B. Products

As noted above, section 4s(e)(2)(B)(ii) of the CEA directs the Commission to establish both initial and variation margin requirements for SDs and MSPs ''on all swaps that are not cleared.'' The scope provision of the proposed rules[15] states that the proposal would cover swaps that are uncleared swaps[16] and that are executed after the applicable compliance date.[17]

The term ''cleared swap'' is defined in section 1a(7) of the CEA to include any swap that is cleared by a DCO registered with the Commission. The Commission notes, however, that SDs and MSPs also clear swaps through foreign clearing organizations that are not registered with the Commission. The Commission believes that a clearing organization that is not a registered DCO must meet certain basic standards in order to avoid creating a mechanism for evasion of the uncleared margin requirements. Accordingly, the Commission is proposing to include in the definition of cleared swaps certain swaps that have been accepted for clearing by an entity that has received a no-action letter from the Commission staff or exemptive relief from the Commission permitting it to clear such swaps for U.S. persons without being registered as a DCO.[18]

[11] *See* The Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States (Official Government Edition) at 265–268 (2011), available at *http://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf*.

[12] *Id.* at 344–352, 350. *See also* United States Department of the Treasury, Office of Financial Stability, Troubled Asset Relief Program, Four Year Retrospective: An Update on the Wind Down of TARP, *pp.* 3, 18–19. Treasury and the Federal Reserve committed $182 billion to stabilize AIG. Ultimately all of this was recovered plus a return of $22.7 billion.

[13] For purposes of this proposal, the term ''SD'' means any swap dealer registered with the Commission. Similarly, the term ''MSP'' means any major swap participant registered with the Commission.

[14] As required by section 4s of the CEA, the Commission staff also has consulted with the SEC staff.

[15] Proposed Regulation § 23.150.

[16] The term uncleared swap is defined in proposed Regulation § 23.151.

[17] A schedule of compliance dates is set forth in proposed Regulation § 23.160.

[18] *See* CFTC Ltr. No. 14–107 (August 18, 2014) (granting no-action relief to Clearing Corporation of India Ltd.); CFTC Ltr. No. 14–87 (June 26, 2014) (granting no-action relief to Korea Exchange, Inc.); CFTC Ltr. No. 14–68 (May 7, 2014) (granting no-action relief to OTC Clearing Hong Kong Limited

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The Commission requests comment on whether it is appropriate to exclude swaps that are cleared by an entity that is not a registered DCO. If so, the Commission further requests comment on whether the proposed rule captures the proper clearing organizations. For example, should the Commission require that the clearing organizations be qualifying central counterparties (''QCCPs'') [19] or be subject to regulation and supervision that is consistent with the CPSS–IOSCO Principles for Financial Market Infrastructures (''PFMIs'')?

Because the pricing of swaps reflects the credit arrangements under which they were executed, it could be unfair to the parties and disruptive to the markets to require that the rules apply to positions executed before the applicable compliance dates. The rules, however, would permit SDs and MSPs voluntarily to include swaps executed before the applicable compliance date in portfolios margined pursuant to the proposed rules.[20] Many market participants might do so to take advantage of netting effects across transactions.

As a result of the determination by the Secretary of the Treasury to exempt foreign exchange swaps and foreign exchange forwards from the definition of swap,[21] the following transactions would not be subject to the requirements: (i) Foreign exchange swaps; (ii) foreign exchange forwards; and (iii) the fixed, physically settled foreign exchange transactions associated with the exchange of principal in cross-currency swaps.

In a cross-currency swap, the parties exchange principal and interest rate payments in one currency for principal and interest rate payments in another currency. The exchange of principal occurs upon the inception of the swap, with a reversal of the exchange of principal at a later date that is agreed upon at the inception of the swap. The foreign exchange transactions associated with the fixed exchange of principal in a cross-currency swap are closely related to the exchange of principal that occurs in the context of a foreign exchange forward or swap. Accordingly, the Commission is proposing to treat that portion of a cross-currency swap that is a fixed exchange of principal in a manner that is consistent with the treatment of foreign exchange forwards and swaps. This treatment of cross-currency swaps is limited to cross-currency swaps and does not extend to any other swaps such as non-deliverable currency forwards.

The Commission requests comment on the proposed treatment of products. In particular, commenters are invited to discuss the costs and benefits of the proposed approach. Commenters are urged to quantify the costs and benefits, if practicable. Commenters also may suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA.

C. Market Participants

1. *SDs and MSPs*

As noted above, section 4s(e)(2)(B) of the CEA directs the Commission to impose margin requirements on SDs and MSPs for which there is no Prudential Regulator (''covered swap entities'' or ''CSEs'').[22] This provision further states that the requirement shall apply to ''all swaps that are not cleared.'' Section 4s(e)(3)(A)(2) states that the requirements must be ''appropriate to the risks associated with'' the swaps.

Because different types of counterparties can pose different levels of risk, the Commission's proposed requirements would differ depending on the category of counterparty. The proposed rules would establish three categories of counterparty: (i) SDs and MSPs, (ii) financial end users,[23] and (iii) non-financial end users.[24] As discussed below, the nature of an SD/MSP's obligations under the rules would differ depending on whether the counterparty was a covered counterparty or a non-financial end user.

2. *Financial End Users*

a. *Definition*

Financial end users would include any entity that (i) is specified in the definition, and (ii) is not an SD or MSP. The definition lists numerous entities whose business is financial in nature. The proposed rule also would permit the Commission to designate additional entities as financial end users if it identified additional entities whose activities and risk profile would warrant inclusion. As contemplated by the 2013 international framework, the CFTC proposal, which is the same as the Prudential Regulator's proposal, contains greater detail in defining financial end users than the international standards.[25]

In developing the definition, the Commission and the Prudential Regulators sought to provide clarity about whether particular counterparties would be subject to the margin requirements of the proposed rule. The definition is an attempt to strike a balance between the need to capture all financial counterparties that pose significant risk to the financial system and the danger of being overly inclusive.

The Commission believes that financial firms generally present a higher level of risk than other types of counterparties because the profitability and viability of financial firms is more tightly linked to the health of the financial system than other types of counterparties. Because financial counterparties are more likely to default during a period of financial stress, they pose greater systemic risk and risk to the safety and soundness of the CSE.

The list of financial entities is based to a significant extent on Federal statutes that impose registration or chartering requirements on entities that engage in specified financial activities. Such activities include deposit taking and lending, securities and swaps dealing, investment advisory activities, and asset management.

Because Federal law largely looks to the States for the regulation of the business of insurance, the proposed definition broadly includes entities organized as insurance companies or supervised as such by a State insurance regulator. This element of the proposed definition would extend to reinsurance and monoline insurance firms, as well as insurance firms supervised by a foreign insurance regulator.

The proposal also would cover a broad variety and number of nonbank lending and retail payment firms that operate in the market. To this end, the proposal would include State-licensed or registered credit or lending entities

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and certain of its clearing members); CFTC Ltr. No. 14–27 (Mar. 20, 2014) (extending previous grant of no-action relief to Eurex Clearing AG and certain of its clearing members); CFTC Ltr. No. 14–07 (Feb. 6, 2014) (granting no-action relief to ASX Clear (Futures) Pty Limited); and CFTC Ltr. No. 13–73 (Dec. 19, 2013) (extending previous grant of no-action relief to Japan Securities Clearing Corporation and certain of its clearing members).

[19] A QCCP is a clearing organization that meets the standards to be designated as such set forth by the Basel Committee for Banking Supervision in the report ''Capital requirements for bank exposures to central counterparties'' (April 2014).

[20] *See* proposed Regulation § 23.154(b)(2) for initial margin and proposed Regulation § 23.153(c) for variation margin.

[21] Determination of Foreign Exchange Swaps and Foreign Exchange Forwards Under the Commodity Exchange Act, 77 FR 69694 (Nov. 20, 2012).

[22] This term is defined in proposed Regulation § 23.151.

[23] This term is defined in proposed Regulation § 23.151.

[24] This term is defined in proposed Regulation § 23.151 to include entities that are not SDs, MSPs, or financial entities.

[25] ''The precise definition of financial firms, non-financial firms, and systemically important non-financial firms will be determined by appropriate national regulation.'' *See* BCBS/IOSCO Report at 9.

and money services businesses, under proposed regulatory language incorporating an inclusive list of the types of firms subject to State law.[26] However, the Commission recognizes that the licensing of nonbank lenders in some states extends to commercial firms that provide credit to the firm's customers in the ordinary course of business. Accordingly, the Commission is proposing to exclude an entity registered or licensed solely because it finances the entity's direct sales of goods or services to customers. The Commission requests comment on whether this aspect of the proposed rule adequately maintains a distinction between financial end users and commercial end users.

In addition, real estate investment companies would be financial end users, as they are entities that would be investment companies under section 3 of the Investment Company Act but for section 3(c)(5)(C). Furthermore, other securitization vehicles would be financial end users in cases where those vehicles are entities that are deemed not to be investment companies under section 3 of the Investment Company Act pursuant to Rule 3a–7. The Commission also notes that the category of investment companies registered with the SEC under the Investment Company Act would include registered investment companies as well as business development companies.

Under the proposed rule, those cooperatives that are financial institutions, such as credit unions, Farm Credit System banks and associations, and the National Rural Utilities Cooperative Finance Corporation would be financial end users because their sole business is lending and providing other financial services to their members, including engaging in swaps in connection with such loans.[27] Cooperatives that are financial end users may qualify for an exemption from clearing,[28] and therefore, they may enter into non-cleared swaps with covered swap entities that are subject to the proposed rule.

The Commission remains concerned, however, that one or more types of financial entities might escape classification under the specific Federal or State regulatory regimes included in the proposed definition of a financial end user. Accordingly, the definition includes two additional prongs. First, the definition would cover an entity that is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in loans, securities, swaps, funds or other assets for resale or other disposition or otherwise trading in loans, securities, swaps, funds or other assets. The Commission requests comment on the extent to which there are (or may be in the future) pooled investment vehicles that are not captured by the other prongs of the definition (such as the provisions covering private funds under the Investment Advisers Act or commodity pools under the CEA). The Commission also requests comment on whether this aspect of the definition of financial end user provides sufficiently clear guidance to covered swap entities and market participants as to its intended scope, and whether it adequately maintains a distinction between financial end users and commercial end users.

Second, the proposal would allow the Commission to require a swap dealer and major swap participant (''covered swap entity'') to treat an entity as a financial end user for margin purposes, even if the person is not specifically listed within the definition of ''financial end user'' or if the entity is excluded from the definition of financial end user as described below. This provision was included out of an abundance of caution to act as a safety mechanism in the event that an entity didn't fall squarely within one of the listed categories but was effectively acting as a financial end user.

To address the classification of foreign entities as financial end users, the proposal would require the covered swap entity to determine whether a foreign counterparty would fall within another prong of the financial end user definition if the foreign entity was organized under the laws of the United States or any State. The Commission recognizes that this approach would impose upon covered swap entities the difficulties associated with analyzing a foreign counterparty's business activities in light of a broad array of U.S. regulatory requirements. The alternative, however, would require covered swap entities to gather a foreign counterparty's financial reporting data and determine the relative amount of enumerated financial activities in which the counterparty is engaged over a rolling period.[29] The Commission requests comment on whether some other method or approach would adequately assure that the rule's objectives with respect to dealer safety and soundness and reductions of systemic risk can be achieved, in a fashion that can be more readily operationalized by covered swap entities. For example, would it be appropriate to have foreign counterparties certify to CSEs whether they are financial end users or not? This could be operationally simpler for the CSEs and would avoid the circumstance where one CSE, in good faith, deemed a foreign counterparty to be a financial end user and another CSE, in good faith, did not.

The definition of financial entities [30] would exclude the government of any country, central banks, multilateral development banks, the Bank for International Settlements, captive finance companies,[31] and agent affiliates.[32] The exclusion for sovereign entities, multilateral development banks and the Bank for International Settlements is consistent with the 2013 international framework and the proposal of the Prudential Regulators.

[26] The Commission expects that financial cooperatives that provide financial services to their members, such as lending to their members and entering into swaps in connection with those loans, would be treated as financial end users, pursuant to this aspect of the proposed rule's coverage of credit or lending entities.

[27] Under the proposed rule, the financing subsidiaries or affiliates of producer or consumer cooperatives would be non-financial end users.

[28] Section 2(h)(7)(c)(ii) of the CEA and section 3C(g)(4) of the Securities Exchange Act of 1934 authorize the CFTC and the SEC, respectively, to exempt small depository institutions, small Farm Credit System institutions, and small credit unions with total assets of $10 billion or less from the mandatory clearing requirements for swaps and security-based swaps. Additionally, the CFTC, pursuant to its authority under section 2(h)(1)(A) of the CEA, enacted 17 CFR 50.51, which allows cooperative financial entities, including those with total assets in excess of $10 billion, to elect an exemption from mandatory clearing of swaps that: (1) They enter into in connection with originating loans for their members; or (2) hedge or mitigate commercial risk related to loans or swaps with their members.

[29] *See e.g.,* Definitions of ''Predominantly Engaged In Financial Activities'' and ''Significant Nonbank Financial Company and Bank Holding Company'', 68 FR 20756 (April 5, 2013).

[30] Proposed Regulation § 23.151.

[31] A captive finance company is an entity that is excluded from the definition of financial entity under section 2(h)(7)(c)(iii) of the CEA for purposes of the requirement to submit certain swaps for clearing. That section describes it as ''an entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company.''

[32] An agent affiliate is an entity that is an affiliate of a person that qualifies for an exception from the requirement to submit certain trades for clearing. Under section 2(h)(7)(D) of the CEA, ''an affiliate of a person that qualifies for an exception under subparagraph (A) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate, acting on behalf of the person and as an agent, uses the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity.''

Captive finance companies and agent affiliates were excluded by the Dodd-Frank Act from the definition of financial entity subject to mandatory clearing.

The Commission notes that States would not be excluded from the definition of financial end user, as the term ''sovereign entity'' includes only central governments. The categorization of a State or particular part of a State as a financial end user depends on whether that part of the State is otherwise captured by the definition of financial end user. For example, a State entity that is a ''governmental plan'' under ERISA would meet the definition of financial end user.

For a foreign entity that was not a central government, a foreign regulator could request a determination whether the entity was a financial end user. Such a determination could extend to other similarly situated entities in that jurisdiction.

The Commission seeks comment on all aspects of the financial end user definition, including whether the definition has succeeded in capturing all entities that should be included. The Commission requests comment on whether there are additional entities that should be included as financial end users and, if so, how those entities should be defined. Further, the Commission also requests comment on whether there are additional entities that should be excluded from the definition of financial end user and why those particular entities should be excluded. The Commission also requests comment on whether another approach to defining financial end user (*e.g.,* basing the financial end user definition on the financial entity definition as in the 2011 proposal) would provide more appropriate coverage and clarity, and whether covered swap entities could operationalize such an approach as part of their regular procedures for taking on new counterparties.

The Commission requests comment on the costs and benefits of the proposed definition of financial end user. Commenters are urged to quantify the costs and benefits, if practicable. Commenters also may suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA.

b. Small Banks

As noted above, banks would be financial end users under the proposal. They would be subject to initial margin requirements if they entered into uncleared swaps with CSEs and, as discussed below, had material swaps exposure. Staff of the Prudential Regulators have indicated that they expect that the proposed rule likely will have minimal impact on small banks.

Staff of the Prudential Regulators believe that the vast majority of small banks do not engage in swaps at or near that level of activity that would meet the material swaps exposure threshold. If, however, a small bank did exceed the threshold level, the Prudential Regulators believe it would be appropriate for the protection of both the CSE and the small bank for two-way initial margin to be posted. The Commission notes that, as discussed in more detail below, initial margin would only need to be posted to the extent it exceeded $65 million.

The proposed rule would require a CSE to exchange daily variation margin with a small bank, regardless of whether the institution had material swap exposure. However, the covered swap entity would only be required to collect variation margin from a small bank when the amount of both initial margin and variation margin required to be collected exceeded $650,000. The Prudential Regulators have indicated that they expect that the vast majority of small banks will have a daily margin requirement that is below this amount.

The Commission requests comment on all aspects of the proposed treatment of small banks. In particular, the Commission requests comment on the interaction of this proposal with clearing exemptions that have been granted.[33]

c. Affiliates of CSEs

The proposal generally would cover swaps between CSEs and their affiliates that are financial end users. The Commission notes that other applicable laws require transactions between banks and their affiliates to be on an arm's length basis. For example, section 23B of the Federal Reserve Act provides that many transactions between a bank and its affiliates must be on terms and under circumstances, including credit standards, that are substantially the same or at least as favorable to the bank as those prevailing at the time for comparable transactions with or involving nonaffiliated companies.[34] Consistent with that treatment, the Prudential Regulators and the Commission are proposing to apply the margin requirements to swaps between CSEs and their affiliates.

The Commission requests comment on all aspects of the proposed treatment of transactions with affiliates. In particular, the Commission requests comment on the interaction of this proposal with clearing exemptions that have been granted.

d. Multilateral Development Banks

The proposed definition of the term ''multilateral development bank,'' includes a provision encompassing ''[a]ny other entity that provides financing for national or regional development in which the U.S. government is a shareholder or contributing member or which the Commission determines poses comparable credit risk.'' The Commission seeks comment regarding this definition. In particular, is the criterion of comparability of credit risk appropriate for this definition? Should the Commission look to other characteristics of the entity in determining whether it should be within the definition of ''multilateral development bank''?

e. Material Swaps Exposure

A CSE would not be required to exchange initial margin with a financial end user if the financial end user did not have ''material swaps exposure.'' [35] Material swaps exposure would be computed using the average daily aggregate notional amount of uncleared swaps, security-based swaps, foreign exchange forwards, and foreign exchange swaps[36] with all counterparties for June, July, and August of the previous calendar year. Essentially, a financial end user would have material swaps exposure if it held an aggregate gross notional amount of these products of more than $3 billion.[37]

This provision recognizes that a financial end user that has relatively smaller positions does not pose the same risks as a financial end user with

[33] *See* Commission Regulations §§ 50.50(d)(small banks), 50.51 (cooperatives), 50.52 (inter-affiliate trades), and CFTC Ltr. No. 13–22 (June 4, 2013) (treasury affiliates).

[34] 12 U.S.C. 371c–1(a).

[35] Proposed Regulation § 23.152 applies to ''covered counterparties.'' Proposed Regulation § 23.151 defines that term to include financial entities with material swaps exposure.

[36] The 2013 international framework states that all uncleared derivatives, ''including physically settled FX forwards and swaps'' should be included in determining whether a covered entity should be subject to margin requirements. BCBS/IOSCO Report Paragraph 8.8. Although these products would not themselves be subject to margin requirements, they are uncleared derivatives that pose risks. It was the judgment of BCBS/IOSCO that they should be included in identifying significant market participants in the uncleared space. Consistent with international standards and with the Prudential Regulators' proposal, the Commission is proposing to include them for purposes of this calculation.

[37] Proposed Regulation § 23.151.

larger positions. By reducing the number of market participants subject to certain margin requirements, it also addresses the concerns that have been expressed about the availability of sufficient collateral to meet these requirements.

While adoption of a material swaps exposure threshold is consistent with the 2013 international framework,[38] the Commission and the Prudential Regulators, are proposing to set the materiality standard lower than the international standard. However, the lower standard was chosen in order to be consistent with the intent of the international standards, which was to require collection of margin only when the amount exceeds $65 million, as explained below.

The 2013 international framework defines smaller financial end users as those counterparties that have a gross aggregate amount of covered swaps below €8 billion, which, at current exchange rates, is approximately equal to $11 billion. The preliminary view of the Commission and the Prudential Regulators is that defining material swaps exposure as a gross notional exposure of $3 billion, rather than $11 billion, is appropriate because it reduces systemic risk without imposing undue burdens on covered swap entities, and therefore, is consistent with the objectives of the Dodd-Frank Act. This view is based on data and analyses that have been conducted since the publication of the 2013 international framework.

Specifically, the Commission and the Prudential Regulators have reviewed actual initial margin requirements for a sample of cleared swaps. These analyses indicate that there are a significant number of cases in which a financial end user would have a material swaps exposure level below $11 billion but would have a swap portfolio with an initial margin collection amount that significantly exceeds the proposed permitted initial margin threshold amount of $65 million. The intent of both the Commission and the 2013 international framework is that the initial margin threshold provide smaller counterparties with relief from the operational burden of measuring and tracking initial margin collection amounts that are expected to be below $65 million. Setting the material swaps exposure threshold at $11 billion appears to be inconsistent with this intent, based on the recent analyses.

The table below summarizes actual initial margin requirements for 4,686 counterparties engaged in cleared interest rate swaps. Each counterparty represents a particular portfolio of cleared interest rate swaps. Each counterparty had a swap portfolio with a total gross notional amount less than $11 billion and each is a customer of a CCP's clearing member. Column (1) displays the initial margin amount as a percentage of the gross notional amount. Column (2) reports the initial margin, in millions of dollars that would be required on a portfolio with a gross notional amount of $11 billion.

INITIAL MARGIN AMOUNTS ON 4,686 CLEARED INTEREST RATE SWAP PORTFOLIOS

	Column (1) initial margin amount as percentage of gross notional amount (%)	Column (2) initial margin amount on an $11 billion gross notional portfolio ($MM)
Average	2.1	231
25th Percentile	0.6	66
50th Percentile	1.4	154
75th Percentile	2.7	297

As shown in the table above, the average initial margin rate across all 4,686 counterparties, reported in Column (1), is 2.1 percent, which would equate to an initial margin collection amount, reported in Column (2), of $231 million on an interest rate swap portfolio with a gross notional amount of $11 billion. This average initial margin collection amount significantly exceeds the proposed permitted threshold amount of $65 million. Seventy-five percent of the 4,686 cleared interest rate swap portfolios exhibit an initial margin rate in excess of 0.6 percent, which equates to an initial margin amount on a cleared interest rate swap portfolio of $66 million (approximately equal to the proposed permitted threshold amount).

The data above represent actual margin requirements on a sample of interest rate swap portfolios that are cleared by a single CCP. Some CCPs also provide information on the initial margin requirements on specific and representative swaps that they clear. The Chicago Mercantile Exchange (''CME''), for example, provides information on the initial margin requirements for cleared interest rate swaps and credit default swaps that it clears. This information does not represent actual margin requirements on actual swap portfolios that are cleared by the CME but does represent the initial margin that would be required on specific swaps if they were cleared at the CME. The table below presents the initial margin requirements for two swaps that are cleared by the CME.

INITIAL MARGIN AMOUNTS ON CME CLEARED INTEREST RATE AND CREDIT DEFAULT SWAPS

	Column (1) initial margin amount as percentage of gross notional amount (%)	Column (2) initial margin amount on an $11 billion gross notional portfolio ($MM)
5 year, receive fixed and pay floating rate interest rate swap	2.0	216
5 year, sold CDS protection on the CDX IG Series 20 Version 22 Index	1.9	213

[38] BCBS/IOSCO Report at 9.

According to the CME, the initial margin requirement on the interest rate swap and the credit default swap are both roughly two percent of the gross notional amount. This initial margin rate translates to an initial margin amount of roughly $216 million on a swap portfolio with a gross notional amount of $11 billion. Accordingly, this data also indicates that the initial margin collection amount on a swap portfolio with a gross notional size of $11 billion could be significantly larger than the proposed permitted initial margin threshold of $65 million.

In addition to the information provided in the tables above, the Commission's preliminary view is that additional considerations suggest that the initial margin collection amounts associated with uncleared swaps could be even greater than those reported in the tables above. The tables above represent initial margin requirements on cleared interest rate and credit default index swaps. Uncleared swaps in other asset classes, such as single name equity or single name credit default swaps, are likely to be riskier and hence would require even more initial margin. In addition, uncleared swaps often contain complex features, such as nonlinearities, that make them even riskier and would hence require more initial margin. Finally, uncleared swaps are generally expected to be less liquid than cleared swaps and must be margined, under the proposed rule, according to a ten-day close-out period rather than the five-day period required for cleared swaps. The data presented above pertains to cleared swaps that are margined according to a five-day and not a ten-day close-out period. The requirement to use a ten-day close-out period would further increase the initial margin requirements of uncleared versus cleared swaps.

In light of the data and considerations noted above, the Commission's preliminary view is that it is appropriate and consistent with the intent of the 2013 international framework to identify a material swaps exposure with a gross notional amount of $3 billion rather than $11 billion (€8 billion) as is suggested by the 2013 international framework. Identifying a material swaps exposure with a gross notional amount of $3 billion is more likely to result in an outcome in which entities with a gross notional exposure below the material swaps exposure amount would be likely to have an initial margin collection amount below the proposed permitted initial margin threshold of $65 million. The Commission does recognize, however, that even at the lower amount of $3 billion, there are likely to be some cases in which the initial margin collection amount of a portfolio that is below the material swaps exposure amount will exceed the proposed permitted initial margin threshold amount of $65 million. The Commission's preliminary view is that such instances should be relatively rare and that the operational benefits of using a simple and transparent gross notional measure to define the material swaps exposure amount are substantial.

The Commission notes that under the implementation schedule set out below, this requirement would not take effect until January 1, 2019.[39] Parties with gross notional exposures around this amount would have several years notice before the requirements took effect.

The Commission requests comment on all aspects of the material swaps exposure provision. In particular, the Commission requests comment on the proposal to establish a level that is lower than the level set forth in the 2013 international framework. Are there alternative measurement methodologies that do not rely on gross notional amounts that should be used? Does the proposed rule's use and definition of the material swaps exposure raise any competitive equity issues that should be considered? Are there any other aspects of the material swaps exposure that should be considered by the Commission?

The Commission requests comment on the costs and benefits of the proposed definition of material swaps exposure. Commenters are urged to quantify the costs and benefits, if practicable. Commenters also may suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA.

3. Non-Financial End Users

Non-financial end users would include any entity that was not an SD, an MSP, or a financial end user. The proposal would not require CSEs to exchange margin with non-financial end users. The Commission believes that such entities, which generally are using swaps to hedge commercial risk, pose less risk to CSEs than financial entities. Therefore, under section 4s(e)(3)(A)(ii) of the CEA, applying a different standard to trades by CSEs with non-financial entities than to trades by CSEs with covered counterparties would be ''appropriate to the risk.''

This approach is consistent with Congressional intent. Senior Congressional leaders have stated that they do not believe that non-financial end users should be required to post margin for uncleared swaps.[40] In addition, the Dodd-Frank Act generally exempted non-financial end users from the requirement that they submit trades to clearing.[41] If the Commission required them to post margin for uncleared trades, the clearing exemption could be weakened because the costs of clearing are likely to be less than the costs of margining an uncleared position. This approach is also consistent with international standards.[42]

The Commission's proposal is generally consistent with the proposal of the Prudential Regulators but differs in some particulars. The Prudential Regulators' proposal contains the following provision:

> A covered swap entity is not required to collect initial margin with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is neither a financial end user with material swaps exposure nor a swap entity but shall collect initial margin at such times and in such forms (if any) that the covered swap entity determines appropriately address the credit risk posed by the counterparty and the risks of such non-cleared swaps and non-cleared security-based swaps.

The Commission's proposal does not contain this provision.

The Commission's proposal contains other provisions designed to address the mandate under section 4s(e)(3)(A)(i) that Commission rules ''help ensure the safety and soundness'' of SDs and MSPs. First, as discussed further below, the rules would require CSEs to enter into certain documentation with all counterparties, including non-financial entities, to provide clarity about the parties' respective rights and obligations.[43] CSEs and non-financial

[39] Proposed Regulation § 23.160.

[40] Letter from Chairman Debbie Stabenow, Committee on Agriculture, Nutrition and Forestry, U.S. Senate, Chairman Frank D. Lucas, Committee on Agriculture, United States House of Representatives, Chairman Tim Johnson, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, and Chairman Spencer Bachus, Committee on Financial Services, United States House of Representatives to Secretary Timothy Geithner, Department of Treasury, Chairman Gary Gensler, U.S. Commodity Futures Trading Commission, Chairman Ben Bernanke, Federal Reserve Board, and Chairman Mary Shapiro, U.S. Securities and Exchange Commission (April 6, 2011); Letter from Chairman Christopher Dodd, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, and Chairman Blanche Lincoln, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, to Chairman Barney Frank, Financial Services Committee, United States House of Representatives, and Chairman Collin Peterson, Committee on Agriculture, United States House of Representatives (June 30, 2010); *see also* 156 Cong. Rec. S5904 (daily ed. July 15, 2010) (statement of Sen. Lincoln).

[41] *See* section 2(h)(7) of the CEA.

[42] BCBS/IOSCO Report at pp. 7–8.

[43] Proposed Regulation § 23.158.

entities would be free to set initial margin and variation margin requirements, if any, in their discretion and any thresholds agreed upon by the parties would be permitted.

Second, the proposal would require each CSE to calculate hypothetical initial and variation margin amounts each day for positions held by non-financial entities that have material swaps exposure to the covered counterparty.[44] That is, the CSE must calculate what the margin amounts would be if the counterparty were another SD or MSP and compare them to any actual margin requirements for the positions.[45] These calculations would serve as risk management tools to assist the CSE in measuring its exposure and to assist the Commission in conducting oversight of the CSE.

D. Nature and Timing of Margin Requirements

1. Initial Margin

Subject to thresholds discussed below, the proposal would require each CSE to collect initial margin from, and to post initial margin with, each covered counterparty on or before the business day after execution [46] for every swap with that counterparty.[47] The proposal would require the CSEs to continue to post and to collect initial margin until the swap is terminated or expires.[48]

Recognizing that SDs and MSPs pose greater risk to the markets and the financial system than other swap market participants, Congress established a comprehensive regulatory scheme for them including registration, recordkeeping, reporting, margin, capital, and business conduct requirements. Accordingly, under the mandate of section 4s(e)(3)(C) to preserve the financial integrity of markets trading swaps and to preserve the stability of the United States financial system, the Commission is proposing to require SDs and MSPs to collect initial margin from, and to post initial margin with, one another.

Similarly, as discussed above, the Commission believes that financial end users with material swaps exposure potentially pose greater risk to CSEs and to the financial system than non-financial end users or financial end users with smaller aggregate exposures. Accordingly, under the mandate of section 4s(e)(3)(A) to help ensure the safety and soundness of SDs and MSPs, the Commission is proposing to require SDs and MSPs to collect initial margin from, and to post initial margin with, financial end users.

Notably, the proposal would require both collecting and posting of initial margin by CSEs (''two-way margin''). Two-way margin helps to ensure the safety and soundness of CSEs. Daily collection of initial margin increases the safety and soundness of the CSE by providing collateral to cover potential future exposure from each counterparty. That is, if a counterparty fails to meet an obligation, the CSE can liquidate the initial margin that it holds to cover some or all of the loss. But daily posting of initial margin also helps to ensure the safety and soundness of a CSE by making it more difficult for the CSE to build up exposures that it cannot fulfill. That is, the requirement that a CSE post initial margin acts as a discipline on its risk taking. The requirement also would make it more difficult for a rogue trader to hide his positions.

In the wake of clearing mandates, uncleared swaps are likely to be more customized and consequently trade in a less liquid market than cleared swaps. As a result, uncleared swaps potentially might take a longer time and require a greater price premium to be liquidated than cleared swaps, particularly in distressed market conditions. Initial margin is designed to address these risks.

The proposal contains a provision stating that a CSE would not be deemed to have violated its obligation to collect initial margin if it took certain steps.[49] Specifically, if a counterparty failed to pay the required initial margin to the CSE, the CSE would be required to make the necessary efforts to attempt to collect the initial margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms,[50] or otherwise demonstrate upon request to the satisfaction of the Commission that it has made appropriate efforts to collect the required initial margin or commenced termination of the swap.

The Commission requests comment on all aspects of the proposal relating to the nature and timing of initial margin. In particular, the Commission requests comment on two-way initial margin.

The Commission requests comment on the costs and benefits of the proposed approach. Commenters are urged to quantify the costs and benefits, if practicable. Commenters also may suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA.

2. Variation Margin

Subject to a minimum transfer amount discussed below, the proposal would require each CSE to collect variation margin from, and to pay variation margin to, each counterparty that is a swap entity or a financial end user, on or before the end of the business day after execution for each swap with that counterparty.[51] The proposed rule would require the CSEs to continue to pay or collect variation margin each business day until the swap is terminated or expires.[52]

Two-way variation margin would protect the safety and soundness of CSEs for the same reasons discussed above in connection with initial margin. Two-way variation margin has been a keystone of the ability of DCOs to manage risk. Each day, starting on the day after execution, current exposure is removed from the market through the payment and collection of variation margin.

If two-way variation margin were not required for uncleared swaps between CSEs and counterparties that are swap entities or financial end users, current exposures might accumulate beyond the financial capacity of a counterparty. In contrast to initial margin, which is designed to cover potential future exposures, variation margin addresses actual current exposures, that is, losses that have already occurred. Unchecked accumulation of such exposures was one of the characteristics of the financial crisis which, in turn, led to the enactment of the Dodd-Frank Act.[53] As with initial margin, the Commission believes that requiring covered swap entities both to collect and pay margin with these counterparties effectively reduces systemic risk by protecting both the covered swap entity and its

[44] Proposed Regulations §§ 23.154(a)(6) and 23.155(a)(3).

[45] This is consistent with the requirement set forth in section 4s(h)(3)(B)(iii)(II) of the CEA that SDs and MSPs must disclose to counterparties who are not SDs or MSPs a daily mark for uncleared swaps.

[46] Commission Regulation § 23.200(e) defines execution to mean, ''an agreement by the counterparties (whether orally, in writing, electronically, or otherwise) to the terms of the swap transaction that legally binds the counterparties to such terms under applicable law.'' 17 CFR 23.200(e).

[47] Proposed Regulation § 23.152(a).

[48] Proposed Regulation § 23.152(b).

[49] Proposed Regulation § 23.152(c).

[50] *See* Commission Regulation § 23.504(b)(4).

[51] Proposed Regulation § 23.153(a).

[52] Proposed Regulation § 23.153(b).

[53] *See* The Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States (Official Government Edition) at 265–268 (2011), available at *http://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf.*

counterparty from the effects of a default.

In contrast to the initial margin requirement, which would only apply to financial end users with material swaps exposure, the proposed variation margin requirement would apply to all financial end users regardless of whether the entity had material swaps exposure. This is consistent with international standards.[54] It reflects the Commission's view that variation margin is an important risk mitigant that (i) reduces the build-up of risk that may ultimately pose systemic risk and (ii) imposes a lesser liquidity burden than does initial margin. Moreover, this approach is consistent with current market practice.

The proposal would permit netting of variation margin across swaps.[55] Any netting would have to be done pursuant to an eligible master netting agreement.[56] The agreement would create a single legal obligation for all individual transactions covered by the agreement upon an event of default. It would specify the rights and obligations of the parties under various circumstances.[57]

As is the case for initial margin, the proposal contains a provision stating that a CSE would not be deemed to have violated its obligation to collect variation margin if it took certain steps.[58] Specifically, if a counterparty failed to pay the required variation margin to the CSE, the CSE would be required to make the necessary efforts to attempt to collect the variation margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, including pursuant to Commission Regulation 23.504(b)(4), if applicable, or otherwise demonstrate upon request to the satisfaction of the Commission that it has made appropriate efforts to collect the required variation margin or commenced termination of the swap.

The Commission requests comment on all aspects of the proposal relating to the nature and timing of variation margin.

The Commission requests comment on the costs and benefits of the proposed approach. Commenters are urged to quantify the costs and benefits, if practicable. Commenters also may suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA.

[54] BCBS/IOSCO Report at 9.

[55] Proposed Regulation § 23.153(c).

[56] Proposed Regulation § 23.151, definition of ''eligible master netting agreement.''

[57] *Id.*

[58] Proposed Regulation § 23.153(d).

E. Calculation of Initial Margin

1. *Overview*

Under the proposed rules, a CSE could calculate initial margin using either a model-based method or a standardized table-based method.[59] The required amount of initial margin would be the amount computed pursuant to the model or the table minus a threshold amount of $65 million.[60] This amount could not be less than zero.[61] The initial margin specified under the rule would be a minimum requirement, and the parties would be free to require more initial margin.

When a CSE entered into a swap with a counterparty that was either another CSE or an SD/MSP subject to a Prudential Regulator, each party would bear the responsibility for calculating the amount that it would collect.[62] Thus, for such trades, the amount a party posted could differ from the amount it collected either because of differences in their respective methodologies or because the product has asymmetric risk. As a practical matter, the Commission understands that the industry is working to develop common standards that would minimize this for methodologies.

When, however, a CSE entered into a swap with a financial entity, the CSE would have responsibility for calculating both the amount it collected and the amount it posted.[63] This is because the statute does not directly impose margin requirements on financial entities. They only come within the scope of section 4s when they trade with SDs or MSPs.

As noted, the rules would permit CSEs and their covered counterparties to establish margin thresholds of up to $65 million. This means that the parties could agree not to post and/or to collect any margin amount falling below this threshold level. For covered entities that were part of a consolidated group, a single threshold would be applied across the consolidated group, not individually to each entity.[64] This threshold is consistent with the 50 million Euro threshold set forth in the international standards as is the consolidated group requirement.[65] The Prudential Regulators proposed the same treatment in this regard.

[59] Proposed Regulation § 23.154.

[60] Proposed Regulation § 23.151, definition of ''initial margin threshold amount.''

[61] Proposed Regulation § 23.154(a)(4).

[62] Proposed Regulation § 23.152(a).

[63] Proposed Regulation § 23.154(b).

[64] Proposed Regulation § 23.151, definition of ''initial margin threshold amount.''

[65] BCBS/IOSCO Report at 9.

Concern has been expressed by some in the industry about the potential expense of two-way margin. The $65 million threshold is designed to mitigate that expense while continuing to protect the financial integrity of CSEs and the financial system. Smaller exposures would be permitted to go uncollateralized, but a significant percentage of all large exposures would be supported by collateral.

For example, if the initial margin calculated for a particular trade were $55 million, the CSE would not be required to post or to collect initial margin because the amount would be below the $65 million threshold. If the margin amount were $75 million, the CSE would only be required to post and to collect $10 million, the amount the margin calculation exceeded the $65 million threshold.

In order to reduce transaction costs, the proposal would establish a ''minimum transfer amount'' of $650,000.[66] Initial and variation margin payments would not be required to be made if the payment were below that amount. This amount is consistent with international standards.[67] It represents an amount sufficiently small that the level of risk reduction might not be worth the transaction costs of transferring the money. It would affect only the timing of collection; it would not change the amount of margin that must be collected once the $650,000 level was exceeded.

For example, if a party posted $80 million as initial margin on Monday and the requirement increased to $80,400,000 on Tuesday, the party would not be required to post additional funds on Tuesday because the $400,000 increase would be less than the minimum transfer amount. If, however, on Wednesday, the requirement increased by another $400,000 to $80,800,000, the party would be required to post the entire $800,000 additional amount.

The Commission requests comment on the $65 million threshold and the $650,000 minimum transfer amount. The Commission requests comment on the costs and benefits of the proposed approach. Commenters are urged to quantify the costs and benefits, if practicable. Commenters also may suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA.

[66] Proposed Regulation § 23.154(a)(3).

[67] BCBS/IOSCO Report at 9.

2. Models

a. Commission Approval

Consistent with international standards, the proposal would require CSEs to obtain the written approval of the Commission before using a model to calculate initial margin.[68] Further, the CSE would have to demonstrate that the model satisfied all of the requirements of this section on an ongoing basis.[69] In addition, a CSE would have to notify the Commission in writing before extending the use of a model that has been approved to an additional product type, making any change to any initial margin model that has been approved that would result in a material change in the CSE's assessment of initial margin requirements; or making any material change to assumptions used in the model.[70] The Commission could rescind its approval of a model if the Commission determined that the model no longer complied with this section.[71]

Given the central place of modeling in most margin systems and the complexity of the process, the Commission believes that these oversight provisions are necessary. The resources that would be needed, however, to initially review and to periodically assess margin models present a significant challenge to the Commission. To address this issue, the Commission would seek to coordinate with both domestic and foreign authorities in the review of models.

In many instances, CSEs whose margin models would be subject to Commission review would be affiliates of entities whose margin models would be subject to review by one of the Prudential Regulators. In such situations, the Commission would coordinate with the Prudential Regulators in order to avoid duplicative efforts and to provide expedited approval of models that a Prudential Regulator had already approved. For example, if a Prudential Regulator had approved the model of a depository institution registered as an SD, Commission review of a comparable model used by a non-bank affiliate of that SD would be greatly facilitated. Similarly, the Commission would coordinate with the SEC for CSEs that are dually registered and would coordinate with foreign regulators that had approved margin models for foreign CSEs. For CSEs that that wished to use models that were not reviewed by a Prudential Regulator, the SEC, or a foreign regulator, the Commission would coordinate, if possible, with the National Futures Association (''NFA'') as each CSE would be required to be a member of the NFA.

The Commission requests comment on all aspects of the proposed margin approval process. Specifically, the Commission requests comment on the appropriateness and feasibility of coordinating with the Prudential Regulators, the SEC, foreign regulators, and the NFA in this regard.

The Commission is also considering whether it would be appropriate to provide for provisional approval upon the filing of an application pending review. The Commission requests comment on the appropriateness of such an approach.

In order to expedite the review of models further, the Commission is proposing to delegate authority to staff to perform the functions described above. As is the case with existing delegations to staff, the Commission would continue to reserve the right to perform these functions itself at any time.

The Commission requests comment on whether additional procedural detail is appropriate. For example, should time frames be specified for completion of any of the functions?

b. Applicability to Multiple Swaps

To the extent that more than one uncleared swap is executed pursuant to an eligible master netting agreement (''EMNA'') [72] between a CSE and a covered counterparty, the CSE would be permitted to calculate initial margin on an aggregate basis with respect to all uncleared swaps governed by such agreement.[73] As explained below, however, only exposures in certain asset classes could be offset. If the agreement covered uncleared swaps entered into before the applicable compliance date, those swaps would have to be included in the calculation.[74]

The proposal defines EMNA as any written, legally enforceable netting agreement that creates a single legal obligation for all individual transactions covered by the agreement upon an event of default (including receivership, insolvency, liquidation, or similar proceeding) provided that certain conditions are met. These conditions include requirements with respect to the covered swap entity's right to terminate the contract and to liquidate collateral and certain standards with respect to legal review of the agreement to ensure that it meets the criteria in the definition.

The Commission requests comment on all aspects of the proposed definition of EMNA. In particular, the Commission requests comment on whether the proposal provides sufficient clarity regarding the laws of foreign jurisdictions that provide for limited stays to facilitate the orderly resolution of financial institutions. The Commission also seeks comment regarding whether the provision for a contractual agreement subject by its terms to limited stays under resolution regimes adequately encompasses potential contractual agreements of this nature or whether this provision needs to be broadened, limited, clarified, or modified in some manner.

c. Elements of a Model

The proposal specifies a number of conditions that a model would have to meet to receive Commission approval.[75] They include, among others, the following.

(i) Ten-Day Close-Out Period

The model must calculate potential future exposure using a one-tailed 99 percent confidence interval for an increase in the value of the uncleared swap or netting set of uncleared swaps due to an instantaneous price shock that is equivalent to a movement in all material underlying risk factors, including prices, rates, and spreads, over a holding period equal to the shorter of ten business days or the maturity of the swap.

The required 10-day close-out period assumption is consistent with counterparty credit risk capital requirements for banks. The calculation must be performed directly over a 10-day period. In the context of bank regulatory capital rules, a long horizon calculation (such as 10 days), under certain circumstances, may be indirectly computed by making a calculation over a shorter horizon (such as 1 day) and then scaling the result of the shorter horizon calculation to be consistent with the longer horizon. The proposed rule does not provide this option to covered swap entities using an approved initial margin model. The Commission's understanding is that the rationale for allowing such indirect calculations that rely on scaling shorter horizon calculations has largely been based on computational and cost considerations that were material in the

[68] Proposed Regulation § 23.154(b)(1). *See* BCBS/IOSCO Report at 12: ''any quantitative model that is used for initial margin purposes must be approved by the relevant supervisory authority.''

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] This term is defined in Proposed Regulation § 23.151.

[73] Proposed Regulation § 23.154(b)(2).

[74] *Id.*

[75] Proposed Regulation § 23.154(b)(3).

past but are much less so in light of advances in computational speeds and reduced computing costs. The Commission seeks comment on whether the option to make use of such indirect calculations has a material effect on the burden of complying with the proposed rule, and whether such indirect methods are appropriate in light of current computing methods and costs.

(ii) Portfolio Offsets

The model may reflect offsetting exposures, diversification, and other hedging benefits for uncleared swaps that are governed by the same EMNA by incorporating empirical correlations within the broad risk categories, provided the covered swap entity validates and demonstrates the reasonableness of its process for modeling and measuring hedging benefits. The categories are agriculture, credit, energy, equity, foreign exchange/interest rate, metals, and other. Empirical correlations under an eligible master netting agreement may be recognized by the model within each broad risk category, but not across broad risk categories. The sum of the initial margins calculated for each broad risk category must be used to determine the aggregate initial margin due from the counterparty.

For example, if a CSE entered into two credit swaps and two energy swaps with a single counterparty, the CSE could use an approved initial margin model to perform two separate calculations: the initial margin calculation for the credit swaps and the initial margin calculation for the energy commodity swaps. Each calculation could recognize offsetting and diversification within the credit swaps and within the energy commodity swaps. The result of the two separate calculations would then be summed together to arrive at the total initial margin amount for the four swaps (two credit swaps and two energy commodity swaps).

The Commission believes that the correlations of exposures across unrelated asset categories, such as credit and energy commodities, are not stable enough over time, and, in particular, during periods of financial stress, to be recognized in a regulatory margin model requirement. The Commission further believes that a single commodity asset class is too broad and that the relationship between disparate commodity types, such as aluminum and corn, are not stable enough to warrant hedging benefits within the initial margin model. The Commission seeks comment on this specific treatment of asset classes for initial margin purposes and whether fewer or more distinctions should be made.

The Commission is aware that some swaps may be difficult to classify into one and only one asset class because some swaps may have characteristics that relate to more than one asset class. Under the proposal, the Commission expects that the CSE would make a determination as to which asset class best represents the swap based on a holistic view of the underlying swap. As a specific example, many swaps may have some sensitivity to interest rates even though most of the swap's sensitivity relates to another asset class such as equity or credit. The Commission seeks comment on whether or not this approach is reasonable and whether or not instances in which the classification of a swap into one of the broad asset classes described above is problematic and material. If such instances are material, the Commission seeks comment on alternative approaches to dealing with such swaps.

(iii) Stress Calibration

The proposed rule requires the initial margin model to be calibrated to a period of financial stress. In particular, the initial margin model must employ a stress period calibration for each broad asset class (agricultural commodity, energy commodity, metal commodity, other commodity, credit, equity, and interest rate and foreign exchange). The stress period calibration employed for each broad asset class must be appropriate to the specific asset class in question. While a common stress period calibration may be appropriate for some asset classes, a common stress period calibration for all asset classes would only be considered appropriate if it is appropriate for each specific underlying asset class. Also, the time period used to inform the stress period calibration must include at least one year, but no more than five years, of equally-weighted historical data.

This proposed requirement is intended to balance the tradeoff between shorter and longer data spans. Shorter data spans are sensitive to evolving market conditions but may also overreact to short-term and idiosyncratic spikes in volatility. Longer data spans are less sensitive to short-term market developments but may also place too little emphasis on periods of financial stress, resulting in requirements that are too low. The requirement that the data be equally weighted is intended to establish a degree of consistency in model calibration while also ensuring that particular weighting schemes do not result in excessive margin requirements during short-term bouts of heightened volatility.

The model must use risk factors sufficient to measure all material price risks inherent in the transactions for which initial margin is being calculated. The risk categories must include, but should not be limited to, foreign exchange or interest rate risk, credit risk, equity risk, agricultural commodity risk, energy commodity risk, metal commodity risk, and other commodity risk, as appropriate. For material exposures in significant currencies and markets, modeling techniques must capture spread and basis risk and incorporate a sufficient number of segments of the yield curve to capture differences in volatility and imperfect correlation of rates along the yield curve.

The initial margin model must include all material risks arising from the nonlinear price characteristics of option positions or positions with embedded optionality and the sensitivity of the market value of the positions to changes in the volatility of the underlying rates, prices, or other material risk factors.

(iv) Frequency of Margin Calculation

The proposed rule requires daily calculation of initial margin. The use of an approved initial margin model may result in changes to the initial margin amount on a daily basis for a number of reasons.

First, the characteristics of the swaps that have a material effect on their risk may change over time. As an example, the credit quality of a corporate reference entity upon which a credit default swap contract is written may undergo a measurable decline.

Second, any change to the composition of the swap portfolio that results in the addition or deletion of swaps from the portfolio would result in a change in the initial margin amount.

Third, the underlying parameters and data that are used in the model may change over time as underlying conditions change. For example, a new period of financial stress may be encountered in one or more asset classes. While the stress period calibration is intended to reduce the extent to which small or moderate changes in the risk environment influence the initial margin model's risk assessment, a significant change in the risk environment that affects the required stress period calibration could influence the margin model's overall assessment of the risk of a swap.

Fourth, quantitative initial margin models are expected to be maintained and refined on a continuous basis to

reflect the most accurate risk assessment possible with available best practices and methods. As best practice risk management models and methods change, so too may the risk assessments of initial margin models.

(v) Benchmarking

The proposed rule requires that a model used for calculating initial margin requirements be benchmarked periodically against observable margin standards to ensure that the initial margin required is not less than what a CCP would require for similar transactions.[76] This benchmarking requirement is intended to ensure that any initial margin amount produced by a model is subject to a readily observable minimum. It will also have the effect of limiting the extent to which the use of models might disadvantage the movement of certain types of swaps to DCOs by setting lower initial margin amounts for uncleared transactions than for similar cleared transactions.

d. Control Mechanisms

The proposal would require CSEs to implement certain control mechanisms.[77] They include, among others, the following.

The CSE must maintain a risk management unit in accordance with existing Commission Regulation 23.600(c)(4)(i) that reports directly to senior management and is independent from the business trading units.[78] The unit must validate its model before implementation and on an ongoing basis. The validation process must include an evaluation of the conceptual soundness of the model, an ongoing monitoring process to ensure that the initial margin is not less than what a DCO would require for similar cleared products, and back testing.

If the validation process revealed any material problems with the model, the CSE would be required to notify the Commission of the problems, describe to the Commission any remedial actions being taken, and adjust the model to insure an appropriate amount of initial margin is being calculated.

The CSE must have an internal audit function independent of the business trading unit that at least annually assesses the effectiveness of the controls supporting the model. The internal audit function must report its findings to the CSE's governing body, senior management, and chief compliance officer at least annually.

Given the complexity of margin models and the incentives to calculate lower margin amounts, the Commission believes that rigorous internal oversight is necessary to ensure proper functioning.

The Commission seeks comment on all aspects of the proposed standards for models and the proposed levels of regulatory review.

The Commission requests comment on the costs and benefits of the proposed approach. Commenters are urged to quantify the costs and benefits, if practicable. Commenters also may suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA.

3. Table-Based Method

a. Method of Calculation

Some CSEs might not have the internal technical resources to develop initial margin models or have simple portfolios for which they want to avoid the complexity of modeling. The table-based method would allow a CSE to calculate its initial margin requirements using a standardized table.[79] The table specifies the minimum initial margin amount that must be collected as a percentage of a swap's notional amount. This percentage varies depending on the asset class of the swap. Except as described below, a CSE would be required to calculate a minimum initial margin amount for each swap and sum up all the minimum initial margin amounts calculated under this section to arrive at the total amount of initial margin. The table is consistent with international standards.[80]

b. Net-to-Gross Ratio Adjustment

The Commission recognizes that using a notional amount measure of initial margin without any adjustment for offsetting exposures, diversification, and other hedging benefits might not accurately reflect the size or risks of a CSE's swap-based positions in many situations. Moreover, not adequately recognizing the benefits of offsets, diversification, and hedging might lead to large disparities between model-based and table-based initial margin requirements. These disparities might give rise to inequities between CSEs that elect to use an approved model and CSEs that rely on the table for computing their respective initial margin requirements.

To address these potential inequities, the Commission is proposing an adjustment to the table-based initial margin requirement. Specifically, the Commission would allow a CSE to calculate a net-to-gross ratio adjustment.[81]

The net-to-gross ratio compares the net current replacement cost of the uncleared portfolio (in the numerator) with the gross current replacement cost of the uncleared portfolio (in the denominator). The net current replacement cost is the cost of replacing the entire portfolio of swaps that is covered under an eligible master netting agreement. The gross current replacement cost is the cost of replacing those swaps that have a strictly positive replacement cost.

For example, consider a portfolio that consists of two uncleared swaps in which the mark-to-market value of the first swap is $10 (*i.e.,* the CSE is owed $10 from its counterparty) and the mark-to-market value of the second swap is –$5 (*i.e.,* the CSE owes $5 to its counterparty). The net current replacement cost is $5 ($10–$5), the gross current replacement cost is $10, and the net-to-gross ratio would be 5/10 or 0.5.[82]

The net-to-gross ratio and gross standardized initial margin amounts provided in the table are used in conjunction with the notional amount of the transactions in the underlying swap portfolio to arrive at the total initial margin requirement as follows:

Standardized Initial Margin = $0.4 \times$ Gross Initial Margin + $0.6 \times \text{NGR} \times$ Gross Initial Margin

where:

Gross Initial Margin = the sum of the notional value multiplied by the applicable initial margin requirement percentage from the table A for each uncleared swap in the portfolio

and

[76] Proposed Regulation § 23.154(b)(5).

[77] Proposed Regulation § 23.154(b)(5).

[78] Commission Regulation § 23.600 requires each registered SD/MSP to establish a risk management program that identifies the risks implicated by the SD/MSP's activities along with the risk tolerance limits set by the SD/MSP. The SD/MSP should take into account a variety of risks, including market, credit, liquidity, foreign currency, legal, operational, settlement, and other applicable risks. The risks would also include risks posed by affiliates. *See* 17 CFR 23.600.

[79] Proposed Regulation § 23.154(c).

[80] BCBS/IOSCO Report at Appendix A.

[81] This calculation is set forth in proposed Regulation § 23.154(c)(2).

[82] Note that in this example, whether or not the counterparties have agreed to exchange variation margin has no effect on the net-to-gross ratio calculation, *i.e.,* the calculation is performed without considering any variation margin payments. This is intended to ensure that the net-to-gross ratio calculation reflects the extent to which the uncleared swaps generally offset each other and not whether the counterparties have agreed to exchange variation margin. As an example, if a swap dealer engaged in a single sold credit derivative with a counterparty, then the net-to-gross calculation would be 1.0 whether or not the dealer received variation margin from its counterparty.

NGR = Net-to-Gross Ratio

The Commission notes that the calculation of the net-to-gross ratio for margin purposes must be applied only to swaps subject to the same EMNA and that the calculation is performed across transactions in disparate asset classes within a single netting agreement. (Thus, all non-cleared swaps subject to the same EMNA can be netted against each other in the calculation of the net-to-gross ratio. By contrast, under a model, netting is only permitted within each asset class). This approach is consistent with the standardized counterparty credit risk capital requirements.

The Commission also notes that if a counterparty maintains multiple swap portfolios under multiple EMNAs, the standardized initial margin amounts would be calculated separately for each portfolio with each calculation using the gross initial margin and net-to-gross ratio that is relevant to each portfolio. The total standardized initial margin would be the sum of the standardized initial margin amounts for each portfolio.

The proposed net-to-gross ratio adjustment is consistent with international standards.[83] The proposed table and adjustment are the same as the Prudential Regulators' proposal.

The Commission seeks comment on all aspects of the proposed table-based approach. The Commission notes that the BCBS has recently adopted a new method for the purpose of capitalizing counterparty credit risk.[84] The Commission seeks comment on whether the BCBS's recently adopted standardized approach would represent a material improvement relative to the proposed method that employs the net-to-gross ratio.

The Commission requests comment on the costs and benefits of the proposed approach. Commenters are urged to quantify the costs and benefits, if practicable. Commenters also may suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA.

F. Calculation of Variation Margin

1. Means of Calculation

Under the proposal, each CSE would be required to calculate variation margin for itself and for each covered counterparty using a methodology and inputs that to the maximum extent practicable and in accordance with existing Regulation 23.504(b)(4) rely on recently-executed transactions, valuations provided by independent third parties, or other objective criteria.[85] In addition, each CSE would have to have in place alternative methods for determining the value of an uncleared swap in the event of the unavailability or other failure of any input required to value a swap.[86]

2. Control Mechanisms

The proposal would also set forth several control mechanisms.[87] Each CSE would be required to create and maintain documentation setting forth the variation margin methodology with sufficient specificity to allow the counterparty, the Commission, and any applicable Prudential Regulator to calculate a reasonable approximation of the margin requirement independently. Each CSE would be required to evaluate the reliability of its data sources at least annually, and make adjustments, as appropriate. The proposal would permit the Commission to require a CSE to provide further data or analysis concerning the methodology or a data source.

These provisions are consistent with international standards [88] and the Prudential Regulators' proposed rules. The Commission's proposal, however, sets forth more detailed requirements. These requirements are consistent with an approach currently under consideration by an IOSCO working group.

The Commission believes that the accurate valuation of positions and the daily payment of variation margin to remove accrued risk is a critical element in assuring the safety and soundness of CSEs and in preserving the financial integrity of the markets. The Commission believes that its experience with cleared markets [89] coupled with the problems in the uncleared markets noted in section II.A. demonstrates this.

The Commission believes that the proposed provisions avoid potential miscalculations and would allow the variation margin calculations to be monitored and, thereby, forestall potential problems that could exacerbate a crisis. These measures are designed to be prudent safeguards to be used to address weaknesses that may only become apparent over time.

The Commission seeks comment on all aspects of the proposed requirements for calculating variation margin.

The Commission requests comment on the costs and benefits of the proposed approach. Commenters are urged to quantify the costs and benefits, if practicable. Commenters also may suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA.

G. Forms of Margin

1. Initial Margin

In general, the Commission believes that margin assets should share the following fundamental characteristics. The assets should be liquid and, with haircuts, hold their value in times of financial stress. The value of the assets should not exhibit a significant correlation with the creditworthiness of the counterparty or the value of the swap portfolio.[90]

Guided by these principles, the Commission is proposing that CSEs may only post or accept certain assets to meet initial margin requirements to or from covered counterparties.[91] These include: U.S. dollars; cash in a currency in which payment obligations under the swap are required to be settled; U.S. Treasury securities; certain securities guaranteed by the U.S.; certain securities issued or guaranteed by the European Central bank, a sovereign entity, or the BIS; certain corporate debt securities; certain equity securities contained in major indices; major currencies,[92] and gold.

These are assets for which there are deep and liquid markets and, therefore, assets that can be readily valued and easily liquidated. This list includes a number of assets that were not included in the 2011 proposal. This is responsive to a number of commenters who expressed concern about the narrowness of that list and the potential that there would be insufficient available collateral.

The Commission notes that any debt security issued by a U.S. Government-sponsored enterprise that is not operating with capital support or another form of direct financial assistance from the U.S. government

[83] BCBS/IOSCO Report at 13.

[84] *See* the Basel Committee on Banking Supervision, ''The standardized approach for measuring counterparty credit risk exposures,'' (March 31, 2014), available at *http://www.bis.org/publ/bcbs279.pdf.*

[85] Proposed Regulation § 23.155(a)(1) and Commission Regulation § 23.504(b)(4).

[86] Proposed Regulation § 23.155(a)(2).

[87] Proposed Regulation § 23.155(b).

[88] BCBS/IOSCO Report at 14–15.

[89] For example, in May 2000, a clearing member defaulted to the New York Clearing Corporation. A significant contributing factor was the lack of a rigorous settlement price procedure which allowed prices in an illiquid market to be mismarked and unrealized losses to accumulate. *See* Report on Lessons Learned from the Failure of Klein & Co, Division of Trading and Markets, Commodity Futures Trading Commission (July 2001).

[90] *See* BCBS/IOSCO Report at 16.

[91] Proposed Regulation § 23.156(a)(1).

[92] Major currencies are defined in Proposed Regulation § 23.151.

would be eligible collateral only if the security met the requirements for corporate debt securities.

The Commission also notes that eligible collateral would include other publicly-traded debt that has been deemed acceptable as initial margin by a Prudential Regulator.[93] The Prudential Regulators have indicated that this would include securities that meet the terms of 12 CFR 1.2(d). That provision states that the issuer of a security must have adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. It further states an issuer has adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely payment of principal and interest is expected. For example, municipal bonds that meet this standard, as determined by a Prudential Regulator, would be eligible collateral.

Under the proposal, certain assets would be prohibited from use as initial margin.[94] These include any asset that is an obligation of the party providing such asset or an affiliate of that party. These also include instruments issued by bank holding companies, depository institutions and market intermediaries. The use of such assets as initial margin could compound risk. These restrictions reflect the Commission's view that the price and liquidity of securities issued by the foregoing entities are very likely to come under significant pressure during a period of financial stress when a CSE may be resolving a counterparty's defaulted swap position and present an additional source of risk.

The Commission requests comment on the securities subject to this restriction, and, in particular, on whether securities issued by other entities, such as non-bank systemically important financial institutions designated by the Financial Stability Oversight Council, also should be excluded from the list of eligible collateral.

Counterparties that wished to rely on assets that do not qualify as eligible collateral under the proposed rule still would be able to pledge those assets with a lender in a separate arrangement, such as collateral transformation arrangements, using the cash or other eligible collateral received from that separate arrangement to meet the minimum margin requirements.

Moreover, the Commission notes that the proposal would not restrict the types of collateral that could be collected or posted to satisfy margin terms that are bilaterally negotiated above required amounts. For example, if, notwithstanding the $65 million threshold, a CSE decided to collect initial margin to protect itself against the credit risk of a particular counterparty, the CSE could accept any form of collateral.

Except for U.S. dollars and the currency in which the payment obligations of the swap is required, assets posted as required initial margin would be subject to haircuts in order to address the possibility that the value of the collateral could decline during the period that it took to liquidate a swap position in default. The proposed collateral haircuts have been calibrated to be broadly consistent with valuation changes observed during periods of financial stress.

Because the value of noncash collateral and foreign currency may change over time, the proposal would require a CSE to monitor the value of such collateral previously collected to satisfy initial margin requirements and, to the extent the value of such collateral has decreased, to collect additional collateral with a sufficient value to ensure that all applicable initial margin requirements remain satisfied.[95]

The Commission seeks comment on all aspects of the proposed requirements for eligible collateral for initial margin. In particular, the Commission requests comments on whether the list should be expanded or contracted in any way. If so, subject to what terms and conditions?

The Commission requests comment on the costs and benefits of the proposed approach. Commenters are urged to quantify the costs and benefits, if practicable. Commenters also may suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA.

2. Variation Margin

The proposal would require that variation margin be paid in U.S. dollars, or a currency in which payment obligations under the swap are required to be settled.[96] When determining the currency in which payment obligations under the swap are required to be settled, a covered swap entity must consider the entirety of the contractual obligation. As an example, in cases where a number of swaps, each potentially denominated in a different currency, are subject to a single master agreement that requires all swap cash flows to be settled in a single currency, such as the Euro, then that currency (Euro) may be considered the currency in which payment obligations are required to be settled.

The proposal is narrower than the 2011 proposal which also permitted U.S. Treasury securities.[97] This change is designed to reinforce the concept that variation margin is paid and to reduce the potential for disputes to arise over the value of assets being used to meet this margin requirement. This proposed change is consistent with regulatory and industry initiatives to improve standardization and efficiency in the OTC derivatives market. For example, in June of 2013, ISDA published the 2013 Standard Credit Support Annex (''SCSA''). The SCSA provides for the sole use of cash as eligible collateral for variation margin. The Commission supports this and other ongoing regulatory and industry efforts at standardization that improve operational efficiency and reduce the differences between the bilateral and cleared OTC derivatives markets.

In this regard, the Commission notes that central counterparties generally require that variation margin be paid in cash. U.S. law applicable to cleared swaps is consistent with this practice. Section 5b(c)(2)(E) of the CEA requires derivatives clearing organizations to ''complete money settlements on a timely basis (but not less frequently than once each business day).'' CFTC Regulation 39.14(a)(1) defines ''settlement'' as, among other things, ''payment and receipt of variation margin for futures, options, and swaps.'' CFTC Regulation 39.14(b) requires that ''except as otherwise provided by Commission order, derivatives clearing organizations shall effect a settlement with each clearing member at least once each business day.''

The Commission believes that this change from the 2011 proposal is appropriate because it better reflects that counterparties to swap transactions generally view variation margin payments as the daily settlement of their exposure(s) to one another. Additionally, limiting variation margin to cash should sharply reduce the potential for disputes over the value of variation margin.

Under this proposed rule, the value of cash paid to satisfy variation margin requirements is not subject to a haircut. Variation margin payments reflect gains and losses on a swap transaction, and payment or receipt of variation margin generally represents a transfer of ownership. Therefore, haircuts are not a

[93] Proposed Regulation § 23.156(a)(1)(ix).

[94] Proposed Regulation § 23.156(a)(2).

[95] Proposed Regulation § 23.156(a)(4).

[96] Proposed Regulation § 23.156(b).

[97] 76 FR 23732 at 23747.

necessary component of the regulatory requirements for cash variation margin.

The proposal is stricter than international standards which do not require that variation margin be in cash.[98] It is the same as the Prudential Regulators' proposal.

The Commission seeks comment on all aspects of the proposed requirements for forms of variation margin.

The Commission requests comment on the costs and benefits of the proposed approach. Commenters are urged to quantify the costs and benefits, if practicable. Commenters also may suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA.

H. Custodial Arrangements

The proposal sets forth requirements for the custodial arrangements for initial margin posted for transactions between CSEs and covered counterparties.[99] Each CSE that posts initial margin with respect to an uncleared swap would be mandated to require that all funds or other property that it provided as initial margin be held by one or more custodians that were not affiliates of the CSE or the counterparty. Each CSE that collects initial margin with respect to an uncleared swap would be mandated to require that such initial margin be held at one or more custodians that were not affiliates of the CSE or the counterparty.

Each CSE would be required to enter into custodial agreements containing specified terms. These would include a prohibition on rehypothecating the margin assets and standards for the substitution of assets.

The proposed rules are consistent with international standards except that international standards would allow rehypothecation under certain circumstances.[100] The proposal is the same as the Prudential Regulators' proposal. The Commission also notes that the European Supervisory Authorities have proposed to prohibit rehypothecation.[101]

The proposed approach is grounded in several provisions of section 4s(e) of the CEA. First, section 4s(e)(3)(A)(i) mandates that margin rules ''help ensure the safety and soundness of [SDs] and [MSPs].'' Maintaining margin collateral at an independent custodian subject to specified terms protects both parties to a transaction by preventing assets from being lost or misused. In particular, a prohibition on rehypothecation enhances safety by avoiding the possibility that a margin asset will be lost because of the failure of a third party who was not a party to the original transaction.

Second, section 4s(e)(3)(C) mandates that margin rules preserve ''the financial integrity of the markets trading swaps'' and ''the stability of the United States financial system.'' Maintaining margin collateral at an independent custodian preserves financial integrity and financial stability by preventing the same asset from supporting multiple positions. If an SD could take collateral posted by a counterparty for one swap and reuse it to margin a second swap with another SD, and that SD could, in turn, do the same, this would increase leverage in the system and create the possibility of a cascade of defaults if one of these firms failed.

Third, section 4s(e)(3)(A) refers to the ''greater risk'' to SDs, MSPs, and the financial system ''arising from the use of swaps that are not cleared.'' It mandates rules ''appropriate for the risk'' associated with uncleared swaps. Margin posted by customers to futures commission merchants (''FCMs'') and by FCMs to DCOs for cleared swaps is subject to segregation requirements.[102] It would be inappropriate to address the greater risk of uncleared swaps with a lesser standard.

The proposed rules can be harmonized with section 4s(l) of the CEA which authorizes counterparties of an SD or an MSP to request that margin be segregated. As discussed above, covered counterparties pose risk to the financial system. The primary purpose of the proposed custodial arrangements is preservation of the financial integrity of the markets and the U.S. financial system although the arrangements will also have the effect of protecting individual market participants. Section 4s(l) is not made superfluous by the proposed rules because it would still be available for financial end users with less than material swaps exposure, for financial end users that post initial margin in excess of the required amount, and for non-financial end users that post initial margin. Such entities would be posting margin, by agreement, with SDs or MSPs. Section 4s(l) would provide them with an opportunity to obtain additional protection if they desired.

The Commission previously adopted rules implementing section 4s(l).[103] The Commission is now proposing to amend those rules to reflect the approach described above where segregation of initial margin would be mandatory under certain circumstances. The Commission is proposing three changes.

First, the proposal would amend § 23.701(a)(1) to read as follows: Notify each counterparty to such transaction that the counterparty has the right to require that any Initial Margin the counterparty provides in connection with such transaction be segregated in accordance with §§ 23.702 and 23.703 *except in those circumstances where segregation is mandatory pursuant to § 23.157.* (New language in italics.)

Second, the proposal would amend § 23.701(d) to read as follows: Prior to confirming the terms of any such swap, the swap dealer or major swap participant shall obtain from the counterparty confirmation of receipt by the person specified in paragraph (c) of this section of the notification specified in paragraph (a) of this section, and an election, *if applicable,* to require such segregation or not. The swap dealer or major swap participant shall maintain such confirmation and such election as business records pursuant to § 1.31 of this chapter. (New language in italics.)

Third, the proposal would amend § 23.701(f) to read as follows: A counterparty's election, *if applicable,* to require segregation of Initial Margin or not to require such segregation, may be changed at the discretion of the counterparty upon written notice delivered to the swap dealer or major swap participant, which changed election shall be applicable to all swaps entered into between the parties after such delivery. (New language in italics.)

The Commission seeks comment on all aspects of the proposed requirements regarding custodial arrangements.

The Commission requests comment on the costs and benefits of the proposed approach. Commenters are urged to quantify the costs and benefits, if practicable. Commenters also may suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA.

I. Documentation

The proposal sets forth documentation requirements for CSEs.[104] For uncleared swaps between a CSE and a covered counterparty, the

[98] BCBS/IOSCO Report at 14–15. The international standards do not distinguish between initial margin and variation margin in discussing eligible assets.

[99] Proposed Regulation § 23.157.

[100] BCBS/IOSCO Report at 19–20.

[101] *See* ''Draft Regulatory Technical Standards on Risk-mitigation Techniques for OTC-derivative Contracts Not Cleared by a CCP under Article 11(15) of Regulation (EU) No. 648/2012,'' pp. 11, 42–43 (April 14, 2014).

[102] Section 4d(f) of the CEA.

[103] Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy, 78 FR 66621 (Nov. 6, 2013).

[104] Proposed Regulation § 23.158.

documentation would be required to provide the CSE with the contractual right and obligation to exchange initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by § 23.150 through § 23.160 of this part. For uncleared swaps between a CSE and a non-financial entity, the documentation would be required to specify whether initial and/or variation margin will be exchanged and, if so, to include the information set forth in the rule. That information would include the methodology and data sources to be used to value positions and to calculate initial margin and variation margin, dispute resolution procedures, and any margin thresholds.

The international standards do not contain a specific requirement for documentation. The requirements in the Prudential Regulators' proposal are consistent with the Commission proposal but the Commission proposal contains additional elements.

The Commission proposal contains a cross-reference to an existing Commission rule which already imposes documentation requirements on SDs and MSPs.[105] Consistent with that rule, the proposal would apply documentation requirements not only to covered counterparties but also to non-financial end users. Having comprehensive documentation in advance concerning these matters would allow each party to a swap to manage its risks more effectively throughout the life of the swap and to avoid disputes regarding issues such as valuation during times of financial turmoil. This would benefit not only the CSE but the non-financial end user as well.

The Commission seeks comment on all aspects of the proposed requirements for documentation.

The Commission requests comment on the costs and benefits of the proposed approach. Commenters are urged to quantify the costs and benefits, if practicable. Commenters also may suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA.

J. Implementation Schedule

The proposed rules establish the following implementation schedule:[106]

December 1, 2015 for the requirements in § 23.153 for variation margin;

December 1, 2015 for the requirements in § 23.152 for initial margin for any uncleared swaps where both (i) the CSE combined with all its affiliates and (ii) its counterparty combined with all its affiliates, have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps in June, July, and August 2015 that exceeds $4 trillion, where such amounts are calculated only for business days;

December 1, 2016 for the requirements in § 23.152 for initial margin for any uncleared swaps where both (i) the CSE combined with all its affiliates and (ii) its counterparty combined with all its affiliates, have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps in June, July and August 2016 that exceeds $3 trillion, where such amounts are calculated only for business days;

December 1, 2017 for the requirements in § 23.152 for initial margin for any uncleared swaps where both (i) the CSE combined with all its affiliates and (ii) its counterparty combined with all its affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps in June, July and August 2017 that exceeds $2 trillion, where such amounts are calculated only for business days;

December 1, 2018 for the requirements in § 23.152 for initial margin for any uncleared swaps where both (i) the CSE combined with all its affiliates and (ii) its counterparty combined with all its affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps in June, July and August 2018 that exceeds $1 trillion, where such amounts are calculated only for business days;

December 1, 2019 for the requirements in § 23.152 for initial margin for any other CSE with respect to uncleared swaps entered into with any other counterparty.

This extended schedule is designed to give market participants ample time to develop the systems and procedures necessary to exchange margin and to make arrangements to have sufficient assets available for margin purposes. The requirements would be phased-in in steps from the largest covered parties to the smallest.

Variation margin would be implemented on the first date for two reasons. First, a significant part of the market currently pays variation margin so full implementation would be less disruptive. Second, the elimination of current exposures through the daily use of variation margin would be an effective first step in enhancing the safety and soundness of market participants and the financial integrity of the markets.

The proposal is consistent with international standards except for the 8 billion euro threshold, discussed above, that would apply starting Dec. 1, 2019 under the international standards.[107] The proposal is the same as the proposal of the Prudential Regulators.

The Commission requests comment on the costs and benefits of the proposed approach. Commenters are urged to quantify the costs and benefits, if practicable. Commenters also may suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA.

K. Request for Comment

The Commission requests comment on all aspects of the proposed rules. In particular, as noted above, the Commission invites comments on the potential costs and benefits of each provision. Commenters are urged to quantify the costs and benefits, if practicable. Commenters also may suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA.

III. Advance Notice of Proposed Rulemaking on the Cross-Border Application of the Proposed Margin Rules

A. Alternative Options

Section 2(i) of the CEA [108] provides that the provisions of the CEA relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act, shall not apply to activities outside the United States unless those activities (1) have a direct and significant connection with activities in, or effect on, commerce of the United States or (2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this chapter that was enacted by the Wall Street Transparency and Accountability Act of 2010.

Section 2(i) provides the Commission with express authority over activities outside the United States relating to swaps when certain conditions are met.

[105] Commission Regulation § 23.504.

[106] Proposed Regulation § 23.160.

[107] BCBS/IOSCO Report at 23–24.

[108] 7 U.S.C. 2(i).

As discussed in part I.A. above, the primary purpose of the margin provision in section 4s(e) is to address risk to SDs, MSPs, and the financial system arising from uncleared swaps. Given the risk-mitigation function of the margin rules for uncleared swaps, the Commission believes that the rules should apply on a cross-border basis in a manner that effectively addresses risks to the registered SD or MSP. At the same time, it may be appropriate, consistent with principles of international comity and statutory objectives underlying the margin requirements, to allow SDs and MSPs to satisfy the margin requirements by complying with a comparable regime in the relevant foreign jurisdiction, or to not apply the margin requirements under certain circumstances.

In this Advance Notice of Proposed Rulemaking, the Commission is considering three approaches to applying the margin requirements to Commission-registered SDs and MSPs, consistent with section 2(i): (1) A transaction-level approach that is consistent with the Commission's cross-border guidance (''Guidance Approach''); [109] (2) the Prudential Regulators' approach; and (3) an entity-level approach (''Entity-Level Approach''). The general framework for each of these approaches is described below. The Commission is not endorsing at this time any particular approach and invites comments on all aspects of the three approaches and welcomes any suggestions on other possible approaches. The Commission may propose and ultimately adopt one of the three approaches with modifications.

1. The Cross-Border Guidance Approach

Under the first option, the Commission would apply the margin requirements consistent with the Cross-Border Guidance. The Commission stated in the Guidance that it would generally treat the margin requirements (for uncleared swaps) as a transaction-level requirement. Consistent with the rationale stated in the Guidance, under this approach, the proposed margin requirements would apply to a U.S. SD/MSP (other than a foreign branch of a U.S. bank that is a SD/MSP) for all of their uncleared swaps (as applicable), irrespective of whether the counterparty is a U.S. person [110] or not, without substituted compliance.

On the other hand, under this approach, the proposed margin requirements would apply to a non-U.S. SD/MSP (whether or not it is a ''guaranteed affiliate'' [111] or an ''affiliate conduit'' [112]) only with respect to its uncleared swaps with a U.S. person counterparty (including a foreign branch of U.S. bank that is a SD/MSP) and a non-U.S. counterparty that is guaranteed by a U.S. person or is an affiliate conduit. Where the counterparty is a guaranteed affiliate or is an affiliate conduit, the Commission would allow substituted compliance (*i.e.,* the non-U.S. SD/MSP would be permitted to comply with the margin requirements of its home country's regulator if the Commission determines that such requirements are comparable to the Commission's margin requirements).

For trades between a non-U.S. SD/MSP (whether or not it is a guaranteed affiliate or an affiliate conduit) and a non-U.S. counterparty that is not a guaranteed affiliate or affiliate conduit, the Commission would not apply the margin requirements to such swaps.

In the case of a foreign branch of a U.S. bank that is a SD/MSP, the proposed margin requirements would apply with respect to all of its uncleared swaps, regardless of the counterparty. However, where the counterparty to the trade is another foreign branch of a U.S. bank that is a SD/MSP or is a non-U.S. person counterparty (whether or not it is a guaranteed affiliate or an affiliate conduit), the Commission would allow substituted compliance (*i.e.,* the foreign branch of a U.S. bank that is a SD/MSP would be permitted to comply with the margin requirements of the regulator in the foreign jurisdiction where the foreign branch is located if the Commission determines that such requirements are comparable to the Commission's margin requirements).[113]

Below is a summary of how the margin requirements would apply under the Cross-Border Guidance Approach.

	U.S. person (other than Foreign Branch of U.S. Bank that is a Swap Dealer or MSP)	Foreign Branch of U.S. Bank that is a Swap Dealer or MSP	Non-U.S. person guaranteed by, or affiliate conduit of, a U.S. person	Non-U.S. person *not* guaranteed by, and not an affiliate conduit of, a U.S. person
U.S. Swap Dealer or MSP (including an affiliate of a non-U.S. person).	Apply	Apply	Apply	Apply
Foreign Branch of U.S. Bank that is a Swap Dealer or MSP.	Apply	Substituted Compliance.	Substituted Compliance.	Substituted Compliance
Non-U.S. Swap Dealer or MSP (including an affiliate of a U.S. person).	Apply	Substituted Compliance.	Substituted Compliance.	Do Not Apply

[109] Interpretative Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 FR 45292 (July 26, 2013) (''Guidance''). The Commission addressed, among other things, how the swap provisions in the Dodd-Frank Act (including the margin requirement for uncleared swaps) would apply on a cross-border basis. In this regard, the Commission stated that as a general policy matter it would apply the margin requirement as a transaction-level requirement.

[110] The scope of the term ''U.S. person'' as used in the Cross-Border Guidance Approach and the Entity-Level Approach would be the same as under the Guidance. *See* Guidance at 45316–45317 for a summary of the Commission's interpretation of the term ''U.S. person.''

[111] Under the Guidance, *id.* at 45318, the term ''guaranteed affiliate'' refers to a non-U.S. person that is an affiliate of a U.S. person and that is guaranteed by a U.S. person. The scope of the term ''guarantee'' under the Cross-Border Guidance Approach and the Entity-Level Approach would be the same as under note 267 of the Guidance and accompanying text.

[112] Under the Guidance, *id.* at 45359, the factors that are relevant to the consideration of whether a person is an ''affiliate conduit'' include whether: (i) The non-U.S. person is majority-owned, directly or indirectly, by a U.S. person; (ii) the non-U.S. person controls, is controlled by, or is under common control with the U.S. person; (iii) the non-U.S. person, in the regular course of business, engages in swaps with non-U.S. third party(ies) for the purpose of hedging or mitigating risks faced by, or to take positions on behalf of, its U.S. affiliate(s), and enters into offsetting swaps or other arrangements with such U.S. affiliate(s) in order to transfer the risks and benefits of such swaps with third-party(ies) to its U.S. affiliates; and (iv) the financial results of the non-U.S. person are included in the consolidated financial statements of the U.S. person. Other facts and circumstances also may be relevant.

[113] Under a limited exception, where a swap between the foreign branch of a U.S. SD/MSP and a non-U.S. person (that is not a guaranteed or conduit affiliate) takes place in a foreign jurisdiction other than Australia, Canada, the European Union, Hong Kong, Japan, or Switzerland, the counterparties generally may comply only with the transaction-level requirements in the foreign jurisdiction where the foreign branch is located if the aggregate notional value of all the swaps of the U.S. SD's foreign branches in such countries does not exceed 5% of the aggregate notional value of all of the swaps of the U.S. SD, and the U.S. person maintains records with supporting information for the 5% limit and can identify, define, and address any significant risk that may arise from the non-application of the Transaction-Level Requirements.

2. Prudential Regulators' Approach

Under the second option, the Commission would adopt the Prudential Regulators' approach to cross-border application of the margin requirements.[114] Under the Prudential Regulators' proposal, the Prudential Regulators would not assert authority over trades between a non-U.S. SD/MSP [115] that is not guaranteed by a U.S. person and either a (i) non-U.S. SD/MSP that is not guaranteed by a U.S. person or (ii) a non-U.S. person that is not guaranteed by a U.S. person. The Prudential Regulators' approach is generally consistent with the Entity-Level Approach described below, with the exception of the application of the margin requirements to certain non-U.S. SD/MSPs.

However, the Prudential Regulators' proposal in this regard would be consistent with the Commission's Cross-Border Guidance Approach to margin requirements with respect to a trade between a non-U.S. SD/MSP and a non-U.S. person that is not guaranteed by a U.S. person. But under the definition of ''foreign covered swap entity'' in the Prudential Regulators' approach, a non-U.S. SD/MSP controlled by a U.S. person would not be a foreign covered swap entity, and thus, would not qualify for the exclusion from the margin requirement. In addition, the Prudential Regulators' proposal incorporates a ''control'' test for purposes of determining whether a registered SD/MSP (or in the Prudential Regulators' proposal, a ''covered swap entity'') is not a ''foreign'' entity.

3. Entity-Level Approach

Under the third option, the Commission would treat the margin requirements as an entity-level requirement. Under this Entity-Level Approach, the Commission would apply its cross-border rules on margin on a firm-wide level, irrespective of whether the counterparty is a U.S. person.[116] At the same time, in recognition of international comity, the Commission is considering, where appropriate, to allow SDs/MSPs to satisfy the margin requirements by complying with a comparable regime in the relevant foreign jurisdiction, as described in the table below. This approach would be intended to address the concern that the source of the risk to a firm—given that the non-U.S. SD/MSP has sufficient contact with the United States to require registration as an SD/MSP—is not confined to its uncleared swaps with U.S. counterparties or to its uncleared swaps executed within the United States. A firm's losses in uncleared swaps with non-U.S. counterparties, for example, could have a direct and significant impact on the firm's financial integrity and on the U.S. financial system.

Counterparty A	Counterparty B	Applicable requirements
1. U.S. SD/MSP	U.S. person	U.S. (All).
2. U.S. SD/MSP	Non U.S. person guaranteed by a U.S. person	U.S. (All).
3. Non-U.S. SD/MSP guaranteed by a U.S. person.	U.S. person not registered as an SD/MSP	U.S. (All).
4. Non-U.S. SD/MSP guaranteed by a U.S. person.	Non-U.S. person guaranteed by a U.S. person	U.S. (All).
5. U.S. SD/MSP	Non-U.S. person not guaranteed by a U.S. person.	U.S. (Initial Margin collected by U.S. SD/MSP). Substituted Compliance (Initial Margin collected by non-U.S. person not guaranteed by a U.S. person). U.S. (Variation Margin).
6. Non-U.S. SD/MSP guaranteed by a U.S. person.	Non-U.S. person not guaranteed by a U.S. person.	U.S. (Initial Margin collected by non-U.S. SD/MSP guaranteed by a U.S. person). Substituted Compliance (Initial Margin collected by non-U.S. person not guaranteed by a U.S. person). U.S. (Variation Margin).
7. Non-U.S. SD/MSP not guaranteed by a U.S. person.	U.S. person not registered as an SD/MSP	Substituted Compliance (All).
8 Non-U.S. SD/MSP not guaranteed by a U.S. person.	Non-U.S. person guaranteed by a U.S. person	Substituted Compliance (All).
9. Non-U.S. SD/MSP not guaranteed by a U.S. person.	Non-U.S. SD/MSP not guaranteed by a U.S. person.	Substituted Compliance (All).
10. Non-U.S. SD/MSP not guaranteed by a U.S. person.	Non-U.S. person not registered as an SD/MSP and not guaranteed by a U.S. person.	Substituted Compliance (All).

B. Questions

In this Advance Notice of Proposed Rulemaking, the Commission requests comment on all aspects of these options to the cross-border application of the margin requirements. In particular, the Commission is interested in comments relating to the costs and benefits of the various approaches so that it can take that into consideration when developing proposed rules relating to the cross-border application of the margin rules. Commenters are encouraged to address, among other things, the following questions:

1. Under the Guidance Approach and Prudential Regulators Approach, certain trades involving a non-U.S. SD/MSP would be excluded from the Commission's margin rules. The Commission seeks comment on whether this exclusion is over- or under-inclusive, and if so, please explain why.

2. Each of the options provides for substituted compliance under certain situations. In light of the equal or greater supervisory interest of the foreign regulator in certain circumstances, the Commission is seeking comment on whether the scope of substituted compliance under each option is appropriate.

[114] *See* Section 9 of Margin and Capital Requirements for Covered Swap Entities, 12 CFR Part 237 (Sept. 3, 2014), *available at http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20140903c1.pdf.*

[115] Under the Prudential Regulators' approach, if an SD/MSP is under the control of a U.S. person, it would not be considered a non-U.S. SD/MSP.

[116] However, substituted compliance may be available under certain circumstances, as described in the Guidance for entity-level requirements.

3. The Commission is seeking comments on whether, in defining a non-U.S. covered swap entity, it should use the concept of ''control,'' in determining whether a covered swap entity is (or should be treated as) a non-U.S. covered swap entity. If the Commission uses a concept of control, should it be the same as that used by the Prudential Regulators, or should it be different?

4. In the Commission's view, it is the substance, rather than the form, of an agreement, arrangement or structure that should determine whether it should be considered a ''guarantee.'' The Commission invites comment on how the term ''guarantee'' should be construed or defined in the context of these margin rules. For example, should the definition cover the multitude of different agreements, arrangements and structures that transfer risk directly back to the United States with respect to financial obligations arising out of a swap? Should the definition cover such agreements, arrangements and structures even if they do not specifically reference the relevant swap or affirmatively state that it does not apply to such swap? Should the definition cover agreements, arrangements and structures even if the other party to the swap terminates, waives, or revokes the benefit of such agreements, arrangements or structures?

5. The Commission seeks comments on the costs and benefits of harmonization with the Prudential Regulators' proposal.

6. The Commission invites commenters to comment in particular on the benefits of each of the approaches with respect to the statutory goal of protecting the financial system against the risks associated with uncleared swaps.

7. Given that some foreign jurisdictions may not adopt comparable margin requirements, the Commission seeks comment on the costs and benefits of not requiring substituted compliance in emerging markets with respect to certain transactions and what might be an appropriate threshold percentage of a swap portfolio of participants or other standard for a de minimis level. In particular, the Commission is seeking comment on potential competitive impacts. Commenters are encouraged to quantify, if practical.

8. The Commission seeks comment, including quantitative estimates in terms of notional volumes of swap activity, about how the different cross-border alternatives may impact the competitive landscape between U.S. entities and non-U.S. entities participating in swap markets. Specifically, the Commission seeks quantitative estimates of costs of transacting uncleared swaps with each category of counterparties, and/or access specific geographical markets, under each of the different alternatives. Commission seeks quantitative estimates of such impact on the ability of the affected market participants (who might be unable to access specific markets or counterparties) to hedge their risks using uncleared swaps. As the proposed margins on uncleared swaps are designed to strengthen market integrity, the Commission seeks comments on potential impact of each of these alternatives on market participants' business models and trading strategies that could potentially compromise this policy goal. Commenters are encouraged to quantify and provide institutional details.

9. The Commission is seeking comments on how the different alternatives impact price discovery? Commenters are encouraged to quantify, if practical. For instance, will different cross-border alternatives impact the ability of different categories of market participants, as contemplated in these alternatives, to transact uncleared swaps with each other? The Commission seeks quantitative estimates of such impact on transacted volumes and the pricing of uncleared swaps.

10. The Commission is seeking comments on the relative costs and difficulty of compliance associated with each of the three approaches. Is one of the approaches preferable to the others in this regard?

11. The Commission is seeking comments on the impact of each of the three approaches on a SD/MSP's risk management practices.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities.[117] The Commission previously has established certain definitions of ''small entities'' to be used in evaluating the impact of its regulations on small entities in accordance with the RFA.[118] The proposed regulations would affect SDs and MSPs and their counterparties to uncleared swaps. As the only counterparties of SDs and MSPs to uncleared swaps can be other SDs, MSPs or ECPs, the following RFA will only discuss these entities.

The Commission previously has determined that SDs and MSPs are not small entities for purposes of the RFA.[119] The Commission also previously has determined that ECPs are not small entities for RFA purposes.[120] Because ECPs are not small entities, and persons not meeting the definition of ECP may not conduct transactions in uncleared swaps, the Commission need not conduct a regulatory flexibility analysis respecting the effect of these proposed rules on ECPs.

Accordingly, this proposed rule will not have a significant economic effect on any small entity. Therefore, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [121] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. This proposed rulemaking would result in the collection of information requirements within the meaning of the PRA, as discussed below. The proposed rulemaking contains collections of information for which the Commission has previously received control numbers from OMB. The titles for these collections of information are ''Regulations and Forms Pertaining to Financial Integrity of the Market Place, OMB control number 3038–0024'' and ''Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, OMB control number 3038–0088.''

The collections of information that are proposed by this rulemaking are necessary to implement section 4s(e) of the CEA, which expressly requires the Commission to adopt rules governing margin requirements for SDs and MSPs. If adopted, responses to this collection of information would be mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

1. Clarification of Collection 3038–0088

This proposed rulemaking clarifies the existing collection of information found in OMB Control Number 3038–

[117] 5 U.S.C. 601 *et seq.*

[118] 47 FR 18618 (Apr. 30, 1982).

[119] *See* 77 FR 30596, 30701 (May 23, 2012).

[120] *See* 66 FR 20740, 20743 (April 25, 2001).

[121] 44 U.S.C. 3501 *et seq.*

0088.[122] Regulation 23.151 defines terms used in the proposed rule, including the definition of ''eligible master netting agreement,'' which provides that a CSE that relies on the agreement for purpose of calculating the required margin must (1) conduct sufficient legal review of the agreement to conclude with a well-founded basis that the agreement meets specified criteria and (2) establish and maintain written procedures for monitoring relevant changes in the law and to ensure that the agreement continues to satisfy the requirements of this section. The term ''eligible master netting agreement'' is used elsewhere in the proposed rule to specify instances in which a CSE may (1) calculate variation margin on an aggregate basis across multiple non-cleared swaps and (2) calculate initial margin requirements under an initial margin model for one or more swaps.

Proposed Regulations §§ 23.152(c) and 23.153(d) specify that a CSE shall not be deemed to have violated its obligation to collect or post initial and variation margin, respectively, from or to a counterparty if the CSE has made the necessary efforts to collect or post the required margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, or has otherwise demonstrated upon request to the satisfaction of the Commission that it has made appropriate efforts to collect or post the required margin.

Proposed Regulation § 23.154 establishes standards for initial margin models. These standards include (1) a requirement that a CSE review its initial margin model annually (§ 23.154(b)(4)); (2) a requirement that the covered swap entity validate its initial margin model initially and on an ongoing basis, describe to the Commission any remedial actions being taken, and report internal audit findings regarding the effectiveness of the initial margin model to the CSE's board of directors or a committee thereof (§§ 23.154(b)(5)(ii) through 23.154(b)(5)(iv)); (3) a requirement that the CSE adequately documents all material aspects of its initial margin model (§ 23.154(b)(6)); and (4) a requirement that the CSE adequately documents internal authorization procedures, including escalation procedures that require review and approval of any change to the initial margin calculation under the initial margin model, demonstrable analysis that any basis for any such change is consistent with the requirements of this section, and independent review of such demonstrable analysis and approval (§ 23.154(b)(7)).

Proposed Regulation § 23.155(b) requires a covered swap entity to create and maintain documentation setting forth the variation margin methodology, evaluate the reliability of its data sources at least annually, and make adjustments, as appropriate, and provides that the Commission at any time may require a covered swap entity to provide further data or analysis concerning the methodology or a data source.

Proposed Regulation § 23.158 requires a covered swap entity to execute trading documentation with each counterparty that is either a swap entity or financial end user regarding credit support arrangements that (1) provides the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required; and (2) specifies the methods, procedures, rules, and inputs for determining the value of each non-cleared swap or non-cleared security-based swap for purposes of calculating variation margin requirements, and the procedures for resolving any disputes concerning valuation. The reporting and recordkeeping requirements of proposed Regulation § 23.158, proposed Regulations § 23.154(b)(4) through (7), and proposed Regulation § 23.155(b) are contained in the provisions of Commission Regulations 23.500 through 23.506, which were adopted on September 11, 2012, and part of OMB Control No. 3038–0088.[123] Thus, the requirements in this proposal that are subject to collection 3038–0088 were previously addressed by the Commission in adopting the swap documentation trading requirements and simply further clarified in this proposal.

To be sure, Commission Regulation § 23.504(b) requires an SD or MSP to maintain written swap trading relationship documentation that must include all terms governing the trading relationship between the SD or MSP and its counterparty, and Commission Regulation § 23.504(d) requires that each SD and MSP maintain all documents required to be created pursuant to Commission Regulation 23.504. Also, Commission Regulation § 23.502(c) requires each SD and MSP to notify the Commission and any applicable Prudential Regulator of any swap valuation dispute in excess of $20 million if not resolved in specified timeframes. Accordingly, this proposed rulemaking, specifically the requirements found in proposed Regulation § 23.154(b)(4) through (7), proposed Regulations §§ 23.155(b) and 23.158, would not impact the burden estimates currently provided for in OMB Control No. 3038–0088.

2. Revisions to Collection 3038–0024

Collection 3038–0024 is currently in force with its control number having been provided by OMB. The proposal would revise collection 3038–0024 as discussed below.

Proposed Regulation § 23.154(b)(1) requires CSEs that wish to use initial margin models to obtain the Commission's approval, and to demonstrate to the Commission that the models satisfy standards established in § 23.154.[124] These standards include (1) a requirement that a CSE receive approval from the Commission based on a demonstration that the initial margin model meets specific requirements (§ 23.154(b)(1)); (2) a requirement that a CSE notify the Commission in writing 60 days before extending the use of the model to additional product types, making certain changes to the initial margin model, or making material changes to modeling assumptions (§ 23.154(b)(1)); and (3) a variety of quantitative requirements, including requirements that the CSE validate and demonstrate the reasonableness of its process for modeling and measuring hedging benefits, demonstrate to the satisfaction of the Commission that the omission of any risk factor from the calculation of its initial margin is appropriate, demonstrate to the satisfaction of the Commission that incorporation of any proxy or approximation used to capture the risks of the covered swap entity's non-cleared swaps or non-cleared security-based swaps is appropriate, periodically review and, as necessary, revise the data used to calibrate the initial margin model to ensure that the data incorporate an appropriate period of significant financial stress (§ 23.154(b)(3)).

The requirement of proposed Regulation § 23.154(b)(1) that a CSE

[122] *See* OMB Control No. 3038–0088, available at *http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0088*.

[123] 77 FR 55904 (Sept. 12, 2012).

[124] The Commission previously proposed to adopt regulations governing standards and other requirements for initial margin models that would be used by SDs and MSPs to margin uncleared swap transactions. *See* Capital Requirements of Swap Dealers and Major Swap Participants, 76 FR 27,802 (May 12, 2011). As part of the proposal, the Commission submitted proposed revisions to collection 3038–0024 for the estimated burdens associated with the margin model to OMB. The Commission is resubmitting new estimated burden as part of this re-proposal of the regulations.

must obtain the Commission's approval to use an initial margin model by submitting documentation demonstrating that the initial margin model meets the standards set forth in § 23.154, and the requirement that a CSE must provide the Commission with written notice 60 days prior to extending the use of the initial margin model to additional product types or making material changes to the model would result in revisions to the collection.

Currently, there are approximately 100 SDs and MSPs provisionally registered with the Commission. The Commission further estimates that approximately 60 of the SDs and MSPs will be subject to the Commission's margin rules as they are not subject to a Prudential Regulator. The Commission further estimates that all SDs and MSPs will seek to obtain Commission approval to use models for computing initial margin requirements. The Commission estimates that the initial margin model requirements will impose an average of 240 burden hours per registrant.

Based upon the above, the estimated additional hour burden for collection 3038–0024 was calculated as follows:

Number of registrants: 60.

Frequency of collection: Initial submission and periodic updates.

Estimated annual responses per registrant: 1.

Estimated aggregate number of annual responses: 60.

Estimated annual hour burden per registrant: 240 hours.

Estimated aggregate annual hour burden: 14,400 hours [60 registrants × 240 hours per registrant].

3. Information Collection Comments

The Commission invites the public and other Federal agencies to comment on any aspect of the reporting burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (3) determine whether there are ways to 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 automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by email at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the **ADDRESSES** section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting *RegInfo.gov.* 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.

C. Cost-Benefit Considerations

1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[125] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

The Commission recognizes that there is an inherent trade-off involved in setting minimum collateral standards. Such standards could increase margin requirements, which in turn would require market participants to post additional collateral. Posting additional collateral may result in opportunity costs in terms of lost returns from investing the funds in collateral, or in interest expenses incurred to raise additional funds. Such costs may reduce the investment returns for market participants posting collateral. On the other hand, minimum collateral standards help to mitigate counterparty credit risk. This is achieved by requiring market participants to post collateral that is sufficient to cover potential losses from default most of the time. The potential reduction in investment returns for market participants posting collateral might also be offset to some degree by improvements in pricing as a result of the reduction in risk of the swap. The reduction in counterparty credit risk from the posting of collateral may result in tighter spreads quoted by liquidity providers.[126] From a regulatory perspective, minimum collateral standards introduce a trade-off between potentially lowering anticipated returns for market participants and lowering systemic risk from counterparty defaults. A substantial loss from a default might induce a cascade of defaults in a financial network, and perhaps, induce a liquidity crisis and the seizing up of parts of the financial system. In developing this proposal, the Commission has sought to reduce the potential lowering of investment returns of market participants by allowing them to use approved models to set margin collateral for certain swap transactions while still guarding against the dangers of systemic risk from counterparty defaults, along with other parts of the rule.

2. Rule Summary

This proposed rulemaking is a re-proposal of prior CFTC proposed rulemaking.[127] It is the result of a working group consultation paper issued by BCBS–IOSCO on margin for OTC-derivative contracts not cleared by a CCP (uncleared derivatives).[128] This proposed rulemaking would implement the new statutory framework of section 4s(e) of the CEA, added by section 731 of the Dodd-Frank Act, which requires the Commission to adopt capital and initial and variation margin requirements for certain SDs and MSPs. Generally, the proposed rule would require the exchange (collection, posting, and payment) of margin by SDs and MSPs for trades with other SDs, MSPs and financial end-users. Initial margin is required to be held at third-party custodians with no rehypothecation. These CSEs would not be required to collect margin from or post margin to commercial end-users.

Generally, the CFTC's margin rules will apply to a SD or MSP whenever

[125] 7 U.S.C. 19(a).

[126] Posting collateral for swap transactions may result in other changes in the relationship between the CSE and counterparty instead of just pricing terms of swap contracts. For instance, bank CSEs might lower the required minimum balance on checking accounts that counterparty maintain with the bank, instead.

[127] *See* 76 FR 23732 (April 28, 2011).

[128] Margin requirements for non-centrally cleared derivatives at *http://www.bis.org/publ/bcbs261.pdf,* September 2013. The proposed rule establishes minimum standards for margin requirements for non-centrally cleared derivatives as agreed by BIS and IOSCO.

there is no Prudential Regulator for that covered swap entity.[129] The CFTC's margin rules will apply to swaps that are not cleared and that are executed subsequent to applicable compliance dates set out below, based on an entity's level of uncleared swaps activity during a particular period.

Generally, a CSE must collect IM from a counterparty that is (i) a swap entity, or (ii) a financial end-user with material swaps exposure ($3 billion notional during June, July and August of the previous year) in an amount that is no less than the greater of: (i) Zero (0) or (ii) the IM collection amount for such swap less the IM threshold amount ($65 million—not including any portion of the IM threshold amount already applied by the covered swap entity or its affiliates to other swaps with the counterparty or its affiliates).

Generally, a CSE must post IM for any swap with a counterparty that is a financial end-user with material swaps exposure (see above). A CSE is not required to collect IM from or post IM to commercial end-users.

There are two general methods for calculating initial margin, the standardized approach and the model-based approach. Under the standardized approach, the CSE must calculate IM collection amounts using a table/grid that is set out in the proposed rule.

The model-based approach calculates an amount of IM that is equal to the potential future exposure (''PFE'') of a swap or a netting set of swaps. PFE is an estimate of the one-tailed 99% confidence interval for an increase in the value of the swap over a 10 day period (*i.e.,* VaR model for a 10 day period). The model-based approach must meet the following requirements: (1) The model must have prior written approval by the Commission; (2) a CSE must demonstrate that the initial margin model continuously satisfies the rule's requirements; (3) a covered swap entity must notify the Commission in writing prior to making material changes to the model, such as: (a) Extending the use of the model to an additional product type; (b) making any change that results in material changes to the amount of IM; or (c) making any material changes to the assumptions of the model. The Commission may rescind its approval in whole or in part of an entity's margin model at any time.

The rules for variation margin are as follows: (1) On or before the business day after execution of an uncleared swap between a covered swap entity and a counterparty that is a swap entity or a financial end user, the covered swap entity must collect variation margin from or pay variation margin to the counterparty; (2) a CSE is not required to collect or pay variation from commercial end-users; and (3) a CSE is not required to collect, post, or pay margin unless and until the total amount of margin transfer to be collected or posted for an individual counterparty exceeds the minimum transfer amount.

The eligible collateral for variation margin is cash funds denominated in (a) USD, or (b) a currency in which payment under the swap contracts is required. The eligible collateral for initial margin includes (subject to haircuts on value) financial instruments in various categories, including cash, Treasury securities, and various publicly traded debt and equity instruments. A CSE may not collect or post as initial margin any asset that is a security issued by (i) the party providing such asset or an affiliate of that party; (ii) various banking entities as listed in the proposed rule; or (iii) certain government-sponsored enterprises unless an exception applies.

As defined in the rule, a financial end-user is any counterparty that is not a covered swap entity and includes, among others: (i) A commodity pool, commodity trading advisor and commodity pool operator (all defined in the CEA); (ii) a private fund (defined in Investment Advisers Act); (iii) an employee benefit plan, as defined in ERISA section 3; (iv) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature (defined in section 4(k) of the BHCA); (v) a person defined in (a)–(d), if that person organized under the laws of the U.S.; and (vi) any other entity that in the Commission's discretion is a financial end-user. A non-financial end-user is any entity that is not a financial end-user or an SD/MSP.

Generally, a CSE entering into a swap with a swap entity or a financial end-user with material swap exposure who posts initial margin to the counterparty must comply with the following conditions: (1) All funds posted as initial margin must be held by a third-party custodian (unaffiliated with either party in the swap); (2) the third-party custodian is prohibited from re-hypothecating (or otherwise transferring) the initial margin; (3) the third-party custodian is prohibited from reinvesting the initial margin in any asset that would not qualify as eligible collateral; and (4) the custodial agreement is legal, valid, binding and enforceable in the event of bankruptcy, insolvency, or similar proceedings.

Generally, a CSE entering into a swap with a swap entity or a financial end-user with a material swap exposure that collects initial margin from the counterparty must require the same conditions listed above for initial margin posted.

Generally, CSEs must comply with the minimum margin requirements for uncleared swaps on or before the following dates. For variation margin, covered swap entities must comply by December 1, 2015. Initial margin is subject to a phased-in period. The compliance date is December 1, 2015 when both (i) the CSE and its affiliates and (ii) its counterparty and its affiliates, have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards and foreign exchange swaps for each business day in June, July and August 2015 that exceeds $4 trillion. The compliance date is December 1, 2016 when both (i) the CSE and its affiliates and (ii) its counterparty and its affiliates, have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards and foreign exchange swaps for each business day in June, July and August 2016 that exceeds $3 trillion. The compliance date is December 1, 2017 when both (i) the CSE and its affiliates and (ii) its counterparty and its affiliates, have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards and foreign exchange swaps for each business day in June, July and August 2017 that exceeds $2 trillion. The compliance date is December 1, 2018 when both (i) the CSE and its affiliates and (ii) its counterparty and its affiliates, have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards and foreign exchange swaps for each business day in June, July and August 2018 that exceeds $1 trillion. The compliance date is December 1, 2019 for any other covered swap entity with respect to uncleared swaps and uncleared security-based swaps entered into with any other counterparty.

3. Status Quo Baseline

The baseline against which this proposed rule will be compared is the status quo. This requires the Commission to assess what is the current practice within the swaps industry. At present, swap market participants are not legally required to post either initial or variation margin

[129] For this rulemaking, a swap entity is either a swap dealer or a major swap participant.

when engaging in uncleared swaps. Nevertheless, for risk management purposes, many market participants currently undertake this practice.

In determining the current market practices, the Commission utilized several sources of swaps market data. These sources include (i) the ISDA Margin Survey 2014 (''ISDA Survey''), (ii) BIS's Quantitative impact study on margin requirements for non-centrally-cleared OTC derivatives (''BCBS/IOSCO Quantitative Impact Study''), and (iii) Swap Data Repository data (''SDR Data''). Although the data the Commission is considering might not be complete, the Commission requests comments regarding whether there is additional data that it should consider when developing its baseline.

a. ISDA Margin Survey

A resource containing current market practice for uncleared swaps is the ISDA Survey.[130] The use of collateral agreements (those with exposure and/or collateral balances) is substantial. The ISDA Survey estimates that roughly 90% of all global uncleared OTC derivatives trades have collateral agreements. 97% and 86% of global bilateral transactions involving credit and fixed income, respectively, are subject to collateral agreements or credit support annexes. The survey reports that the use of cash and government securities accounts for roughly 90% of uncleared global OTC derivative collateral, as has been the case in prior years. The total global collateral related to uncleared derivatives has decreased 14% from $3.7 trillion at the end of 2012 to $3.2 trillion at the end of 2013. The survey asserts that this decrease can be largely attributed to mandatory clearing requirements.

b. BCBS/IOSCO's Quantitative Impact Study

Another source containing current market practices for uncleared swaps is the BCBS/IOSCO Quantitative Impact Study.[131] According to the Study, BCBS/IOSCO Quantitative Impact Study respondents have roughly €319 trillion (approximately $415 trillion) in total outstanding notional derivative positions, are collecting a total of roughly €95 billion (approximately $124 billion) in initial margin and are posting roughly €6 billion (approximately $7.8 billion) in initial margin. Hence, average margin represents about 0.03% of the gross notional exposure.'' [132] The large difference between collected and posted margin reflects the fact that the BCBS/IOSCO Quantitative Impact Study respondents tend to be large derivative dealers with large swap portfolios with transactions that on aggregate mostly offset, have substantial capital, and who have high credit ratings, this generally leads to lower margins.

In light of the definition of potential future exposure in this proposal, it is useful to examine current practice. The table below, reproduced from the BCBS/IOSCO Quantitative Impact Study provides some statistics on potential future exposure, and related industry practices.

TABLE 4b—CURRENT MARGIN PRACTICES FOR UNCLEARED SWAPS

	Average	Median	Number of respondents
Margin period of risk (or risk horizon) in days	8.1	10.0	15
Confidence level (%) used	96.2%	96.3%	14
Length of the look-back period (in years) used in calibration of model	2.9	2.0	13
Level of initial margin as a percentage of potential future exposure	97.5%	100.0%	10
Margin frequency (in days) Variation margin	2.3	1.0	31
Initial margin	1.0	1.0	21

Respondents have provided information on initial margin frequency. Eight (8) of these respondents collect initial margin at deal inception. One (1) of them collects initial margin on an event-driven basis. The remaining 12 respondents collect initial margin daily.

The Commission seeks comment on the representativeness of the BCBS/IOSCO's Quantitative Impact Study. How do the calculations in the BCBS/IOSCO's Quantitative Impact Study compare to the experience of financial institutions? Commenters are encouraged to quantify when possible.

c. Estimates Using SDR Data

Finally, the Commission reports aggregated data derived from data submitted to swap data repositories in a weekly swaps market report.[133] Open swap positions in credit and interest rates as of June 27, 2014 for CFTC regulated CSEs (59 entities) are presented below. The table also includes total notional amount of swaps transacted by these entities in credit and interest rates during the period January to June 2014:

OPEN SWAPS AS OF JUNE 27, 2014

[Notional amount in US$ billions (double count)]

	Uncleared	Cleared
Interest Rates	253,434	223,744
Credit	10,039	879

[130] *See http://www2.isda.org/functional-areas/research/surveys/margin-surveys.*

[131] Bank for International Settlements, February 2013, page 31, *see http://www.bis.org/publ/bcbs242.pdf.*

[132] Bank for International Settlements, February 2013, page 31. *See http://www.bis.org/publ/bcbs242.pdf.*

[133] *See http://www.cftc.gov/MarketReports/SwapsReports/index.htm.*

AGGREGATE NOTIONAL SWAPS TRANSACTION (JANUARY TO JUNE 2014)

[Notional amount in US$ billions (double count)]

	Uncleared	Cleared
Interest Rates	12,630	39,816
Credit	1,362	5,717

The Commission notes that OCC's Economic Impact Analysis for Swaps Margin Proposed Rule [134] has estimated that in year one, OCC-supervised institutions will have to post total initial margin of approximately $331 billion with approximately $283 billion in interest rate and credit swaps. Using annualized notional swaps activity for just interest rate and credit, and adopting a similar methodology to the OCC's Economic Impact Analysis, the Commission estimates that the 59 CFTC regulated CSEs will have to post initial margin in year one of approximately $340 billion or possibly less as noted below. The OCC's estimate and the Commission's estimate are not based on the same data. The OCC's estimates are based on transactions activity implied by the open swaps positions from Call Report schedule RC–L. The Commission's estimates are based on transaction data reported to SDRs. To the extent SDR data includes financial end users without material swaps exposure, nonfinancial end users, sovereigns, and multilateral development banks who do not have to post collateral, the amount of required initial margin would be less than the Commission's estimate of approximately $340 billion. Further, the amount of required initial margin will be lower as a result of the $65 million threshold, too. While the OCC has made certain assumptions regarding coverage of the swaps activity by its regulated entities during the different compliance dates, the Commission does not have access to relevant data to make similar estimates. The Commission's initial margin estimates assume that uncleared swaps activities by CFTC regulated CSEs in these two asset classes will remain the same. These differences in approaches and the data sources means that the Commission's estimates will likely have overstated the actual margins that will be posted in year one after enactment.

The Commission points out that prudentially regulated CSEs, CFTC regulated CSEs, and SEC regulated CSEs will trade with each other. Thus, one cannot simply add the margin estimates by various regulators as this will double count the amount of initial margin collateral for swap transactions between differently regulated CSEs. The Commission seeks comment on how it should consider or allocate the common costs and benefits of the margin collateral that is required by more than one CSE regulator. Further, the Commission seeks comments on all aspects of its initial margin estimates and methods. Commenters are encouraged to quantify, if practical.

4. Section 15(a) Factors

a. Protection of Market Participants and the Public

Margin helps to protect market participants from counterparty credit risk. It also helps to protect the public by lowering the probability of a financial crisis, because margin helps to impede or contain the risk of a cascade of defaults occurring. A cascade occurs when one participant defaulting causes subsequent defaults by its counterparties, and so on, resulting in a domino effect and a potential financial crisis.

The derivatives positions of swap market participants are limited by their ability to post margin. If the ability to post margin is binding, then required margin may reduce swap market exposures for some participants. In many cases, reduced swap market exposure for a participant may lower their probability of default, all else equal. Further, when a swap participant defaults, the margin can be used to absorb the losses to the counterparty. This facilitates the non-defaulting party reestablishing a similar position with a new counterparty.

In requiring daily variation margin payments, the proposed rule would require counterparties to mark-to-market all open swap positions. The process of marking swap contracts to market or model, forces participants to recognize losses promptly and to adjust collateral accordingly. This helps to prevent the accumulation of large unrecognized losses and exposures. Consequently, this frequent settling up may reduce the probability of default of the party who has been experiencing losses on the contract. The proposed rule however, requires a minimum payment amount of $650,000, which provides counterparties with operational relief. This minimum payment does not lower the amount owed, but permits deferral of margin exchanges until it is operationally efficient. In providing this relief the Commission believes that it will lower the overall burden on the financial system, but as a result of this amount being relatively small the Commission believes this deferral would not noticeably increase the overall risk to the financial system and the general public.

The proposed rule also provides that initial margin must be held at a third-party custodian. The margin amount held there cannot be rehypothecated with both parties having access to the collateral. This access is designed to prevent a liquidity event, inducing a cascading event. With rehypothecation, the collateral of some parties may be linked or used as collateral posted for other positions—the same collateral is posted for many positions for many different entities, resulting in a rehypothecation chain. When a default or liquidity event occurs at one link along the rehypothecation chain, it might induce further defaults or liquidity events for other links in the rehypothecation chain, because access to the collateral for other positions may be obstructed by a default along the chain, which may result in a liquidity event along the entire chain.

The cost of providing initial margin collateral reflects the cost of obtaining the assets used as collateral, which is either the cost of raising external funds, or the foregone income that could been earned had the firm invested in a different asset (opportunity cost). The effective cost is the difference between the relevant cost of obtaining eligible assets and the return on the assets that can be pledged as collateral. The effective cost will likely differ between entities and even desks in the same entity as well as over time as conditions change. At one extreme, it may be that some entities providing initial margin, such as pension funds and asset managers, will provide assets as initial margin that they already own and would have owned even if no requirements were in place. In such cases the economic cost of providing initial margin collateral is anticipated to be low. In other cases, entities engaging

[134] *See http://www.regulations.gov/#!documentDetail;D=OCC-2011-0008-0131.*

in uncleared swaps will have to raise additional funds to secure assets that can be pledged as initial margin. The greater the costs of their funding, relative to the rates of return on the initial margin collateral, the greater the cost of providing collateral assets. It is difficult, however, to estimate these costs due to differences in funding costs across different types of entities as well as differences in funding costs over time, and differences in the rate of return on different collateral assets that may be used to satisfy the initial margin requirements. In addition, as a result of the fact that posting margin reduces the risk of default, the posting party could receive a benefit in the form of improved pricing of the swap or other beneficial changes to the relationship between the CSE and the counterparty. To the extent any such benefit is realized, it would offset a portion of the cost incurred in posting collateral.

The Commission seeks comment on the appropriate cost or a proxy for the costs to posting collateral for CFTC regulated entities, recognizing that CFTC entities may have different costs for pledging collateral. The Commission also seeks comments on the quantitative impact of these proposed rules on the pricing of swaps or other changes in the relationships between CSEs and counterparties.

The proposal also requires that variation margin be exchanged between covered swap entities and other swap entities and financial end-users. The Commission preliminarily believes that the impact of such requirements are low in the aggregate because: (i) regular exchange of variation margin is already a well-established market practice among a large number of market participants, and (ii) exchange of variation margin simply redistributes resources from one entity to another in a manner that imposes no aggregate liquidity costs. An entity that suffers a reduction in liquidity from posting variation margin is offset by an increase in the liquidity enjoyed by the entity receiving the variation margin because variation margin is posted with cash. The Commission notes that if the margin payments are not instantaneous, however, there may be a slight loss in liquidity while payments are being posted.

Posting margin may discourage some parties from hedging certain risks because it is no longer cost effective for them to do so. Consequently, this may reduce liquidity for some swap contracts. This concern is mitigated somewhat by exempting non-financial end users from having to post margin. Furthermore, not requiring parties to exchange variation margin when the change in valuation is small enough, $650,000, achieves additional cost savings. The proposed rule will create additional demand for eligible collateral to post as margin. Some advocates have expressed concern regarding the future availability of eligible assets for market participants to post as margin;[135] however, in developing this proposal, the Commission has added additional types of financial instruments to the list of eligible collateral in an attempt to mitigate this concern. That being said, it is too early to tell the extent to which eligible collateral will become more expensive to obtain. Even if higher demand for collateral does increase the price of certain existing assets, the Commission surmises that markets for various forms of collateral will clear. Higher prices may create incentives for creators of high quality assets to supply more in the future. For instance, sovereigns and credit worthy corporations may find it advantageous to issue more debt; as demand increases for their debt, prices will rise with corresponding borrowing rates decreasing. In addition, mutual funds and hedge funds may be willing for a fee to lend out assets that they hold in their portfolios to be pledged as initial margin. Some financial intermediaries may set up services to transform other financial instruments into eligible collateral, too.

According to the Committee on the Global Financial System, there seems to be sufficient eligible collateral at present and in the near term, as they noted that ''Current estimates suggest that the combined impact of liquidity regulation and OTC derivatives reforms could generate additional collateral demand to the tune of $4 trillion. At the same time, the supply of collateral assets is known to have risen significantly since end-2007. Outstanding amounts of AAA- and AA-rated government securities alone—based on the market capitalization of widely used benchmark indices—increased by $10.8 trillion between 2007 and 2012. Other measures suggest even greater increases in supply.'' [136] As discussed above, there may be a reduction in the number of swap contracts due to the cost of posting margin. Indeed, this may be the case even if the cost of posting eligible collateral does not increase in price. Finally, the proposed margin rules will be phased in gradually. This gives regulators the ability to make adjustments, if necessary.

b. The Efficiency, Competitiveness, and Integrity of Markets

The proposed margin requirements make cleared swaps relatively more attractive. The Commission is requiring ten day initial margins for uncleared swaps and only five day margin for cleared swaps. In addition, the Commission is only allowing limited netting for uncleared swaps. All else equal, due to multilateral netting, less collateral may be required in a cleared environment relative to an uncleared environment.[137]

The Commission is allowing only limited netting for uncleared swaps. Limited netting may encourage participants to use a small number of counterparties for multiple swap transactions, because participants can only net swaps from those made with the same counterparty. This may encourage the concentration of risk among a few counterparties. However, these concerns may be mitigated somewhat by performing frequent portfolio compression exercises that facilitate multilateral netting.

Another cost of the rules may be a reduction in the efficacy of hedging. Rules that make standardized swaps relatively less expensive may induce some entities to forego some customized swaps that may better match their exposures. However, before an entity decides to use a standardized swap over a customized uncleared swap, it must weigh the potentially lower margin costs from using standardized swaps against potentially losses from imperfect hedges. Consequently, market participants will still use customized swaps when they believe such swaps are superior for their hedging needs.

All the market protection benefits discussed above may help to improve the integrity of markets, because they make it more likely that swap market participants will be able to perform on their contractual obligations. This comes with potential losses to participants who have to place their capital into margin and, hence potentially receive lower anticipated returns on their capital.

[135] *See,* for instances, Singh (2010), ''Under-collateralisation and rehypothecation in the OTC derivatives markets,'' Banque de France Financial Stability Review (14); Sidanius and Zikes (2012), ''OTC derivatives reform and collateral demand impact,'' Financial Stability Paper (18); and Duffie, Scheicher, and Vuillemey (2014), ''Central Clearing and Collateral Demand,'' working paper, Stanford University.

[136] Committee on the Global Financial System, ''Asset encumbrance and the demand for collateral assets'', *CGFS Papers,* no. 49, May 2013, *http://www.bis.org/publ/cgfs49.pdf.*

[137] Anderson and Joeveer (2014), ''The Economics of Collateral,'' working paper, London School of Economics.

The Commission has endeavored to harmonize this rulemaking with the domestic prudential regulators, as well as with foreign regulators. Two of the goals of harmonization are to satisfy the statute as well as to create a more level playing field thereby promoting fairer competition between entities regulated in different jurisdictions or by different regulators. Otherwise, regulatory arbitrage opportunities might be substantial. Price arbitrage occurs when an identical asset simultaneously has two different prices, so that an arbitrager may buy that asset where it is cheaper and sell it where it is more expensive to garner a risk free profit. Similarly, a regulatory arbitrager takes advantage of regulatory discrepancies by adapting activities so as to locate them in jurisdictions to increase the arbitrager's regulatory profits (*i.e.,* regulatory benefits minus regulatory burdens).

The Commission is in discussion with domestic and foreign regulators on the material swap exposure threshold for financial end users to be required to post margin collateral. The Commission notes that some foreign regimes have proposed a higher threshold than $3 billion. In addition, the Commission realizes that setting a threshold lower than another jurisdiction may result in some market participants conducting some swaps in the jurisdiction with a lower threshold. The Commission is required, to the maximum extent practicable, to harmonize with prudential regulators, and domestic regulators are endeavoring to harmonize with foreign regulators, as well. Therefore, the Commission expects to consider the relative benefits that might come from having consistent standards against those that might come from having different thresholds. The Commission is seeking comment on the costs and benefits of setting the threshold for material swap exposure for financial end users to be required to post margin collateral at various levels. In particular, commenters are encouraged to discuss competitive impacts and to quantify, if practical. In addition, the Commission is seeking comments on the costs and benefits of not fully harmonizing its rules with those of the prudential regulators. Commenters are encouraged to discuss the operational difficulties and to quantify, if practical.

Inasmuch as larger banks tend to have a lower cost of capital than smaller banks, the posting of margin for uncleared swaps may result in a competitive advantage for larger banks when engaging in swaps, all else equal. Even though they are exempted from clearing as financial end users, small banks that have a material swaps exposure generally will have to post margin collateral when engaging in uncleared swaps with CFTC regulated CSEs. Thus, small banks may have to fund additional collateral to post as margin for uncleared swaps or engage in more cleared swaps that require relatively less collateral to post. The Commission is seeking comment on the costs and benefits of requiring small banks with material swaps exposures to post collateral with CFTC regulated CSEs. Commenters may choose to recognize that under the prudential regulators' proposal, small banks that have a material swaps exposure and that engage in swaps with prudentially regulated CSEs would have to post margin collateral for uncleared swaps, too. Further, commenters may also choose to recognize that the Commission is required to harmonize this rulemaking, to the maximum extent practicable, with the prudential regulators. Comments are encouraged to quantify, if practical.

c. Price Discovery

The Commission is requiring ten day initial margins for uncleared swaps and only five day margin for cleared swaps. In addition, the Commission is only allowing limited netting for uncleared swaps. Consequently, these rules promote the use of more standardized cleared swaps at the expense of more customized and opaque swaps.

To the extent traders increase the use of standardized cleared swaps in response to these rules, it may lead to greater transparency, overall, in the swaps markets. Compared to uncleared swaps, standardized swaps' prices tend to be more transparent and the price discovery process for such swaps may improve with higher volumes. Conversely, lower volumes for uncleared swaps may negatively impact the price discovery process for such swaps. However, the Commission believes that the potential reduction in the efficacy of the price discovery process for uncleared swaps is less of a concern, because the price-setting process for uncleared swaps is not conducted on a regulated platform or pursuant to rules requiring transparency and is therefore relatively opaque in the current environment, anyway.

The Commission recognizes that another way the rules may affect price discovery is by promoting confidence in the market. As such, the margin collateral rules may protect, prophylactically, the price discovery process of some swap contracts in some circumstances. The rules might protect price discovery by reducing the frequency of trading interruptions in segments of the swap market due to credit risk concerns. This rulemaking might improve price discovery in these instances, because the presence of collateral mitigates credit risk concerns, and thereby allows these swap contract markets to remain functioning. In turn, this permits market participants to continue to observe the prices of these swaps.

The Commission requests comment on potential effects of the rule on price discovery as well as on the relative use of cleared and uncleared swaps, and on whether particular types of market participants, including intermediaries such as regulated trading platforms, will be impacted differently by the rule. Commenters are urged to quantify the costs and benefits, if practicable.

d. Sound Risk Management Practices

Margin helps to mitigate the credit risk exposure resulting from swap contracts. Further, it is a sound practice to regularly mark to market or model to prevent the accumulation of unrecognized losses and exposures (through the exchange of variation margin). At the same time, requiring margin may help deter traders from taking advantage of the inherent leverage in certain swap transactions.

The Commission is requiring ten day initial margins for uncleared swaps and only five day initial margin for cleared swaps. Thus, the rule may result in the use of more standardized cleared swaps at the expense of more customized swaps which may be harder to evaluate and risk manage; however, this may result in market participants using non-optimal hedging techniques, as noted above, which may increase overall risk at a firm.

Prohibiting rehypothecation at third-party custodians when both parties have access to the collateral will be helpful in the time of default. Otherwise, a liquidity event might occur that induces a cascading event, in which the positions will be linked to other positions and counterparties. The policy of not allowing rehypothecation, however, requires that more collateral be available to post as margin. As discussed above, this does not seem to be a serious problem at present, but it might become one in the future. In addition, to protect parties against the circumstance when pledged collateral might be appropriated by the counterparty, margins must be held at third parties. Facilitating the use of more customized models might induce market participants to more thoroughly analyze the risks of their swap transactions, and may lead to better risk

management practices overall. The Commission is allowing various methods to model the amount of collateral required as initial margin for uncleared swap transactions, including Commission-approved standard models or more customized ones.

In this proposal, the Commission has added flexibility to what constitutes eligible collateral, allowing participants in uncleared swap transactions to 'optimize' their collateral inasmuch as they may reduce their opportunity cost losses from pledging assets with lower anticipated returns. This may result in market participants focusing on improving their margin and risk management practices.

e. Other Public Interest Considerations

The Commission has not identified any other public interest considerations.

List of Subjects

17 CFR Part 23

Swaps, Swap dealers, Major swap participants, Capital and margin requirements.

17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

For the reasons discussed in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR chapter I as set forth below:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

■ 2. Add subpart E to part 23 to read as follows:

Subpart E—Capital and Margin Requirements for Swap Dealers and Major Swap Participants

Sec.

23.100–23.149 [Reserved]
23.150 Scope.
23.151 Definitions applicable to margin requirements.
23.152 Collection and posting of initial margin.
23.153 Collection and payment of variation margin.
23.154 Calculation of initial margin.
23.155 Calculation of variation margin.
23.156 Forms of margin.
23.157 Custodial arrangements.
23.158 Margin documentation.
23.159 Compliance dates.
23.160–23.199 [Reserved]

§§ 23.100–23.149 [Reserved]

§ 23.150 Scope.

The margin requirements set forth in § 23.150 through § 23.159 shall apply to uncleared swaps, as defined in § 23.151, that are executed after the applicable compliance dates set forth in § 23.159.

§ 23.151 Definitions applicable to margin requirements.

For the purposes of §§ 23.150 through 23.159:

Affiliate means any company that controls, is controlled by, or is under common control with another company.

Bank holding company has the meaning specified in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

Broker dealer means an entity registered with the Securities and Exchange Commission under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o).

Control of another company means:

(1) Ownership, control, or power to vote 25 percent or more of a class of voting securities of the company, directly or indirectly or acting through one or more other persons;

(2) Ownership or control of 25 percent or more of the total equity of the company, directly or indirectly or acting through one or more other persons; or

(3) Control in any manner of the election of a majority of the directors or trustees of the company.

Counterparty means the other party to a swap to which a covered swap entity is a party.

Covered counterparty means a financial end user with material swaps exposure, a swap dealer, or a major swap participant that enters into a swap with a covered swap entity.

Covered swap entity means a swap dealer or major swap participant for which there is no prudential regulator.

Cross-currency swap means a swap in which one party exchanges with another party principal and interest rate payments in one currency for principal and interest rate payments in another currency, and the exchange of principal occurs upon the inception of the swap, with reversal of the exchange of principal at a later date that is agreed upon at the inception of the swap.

Data source means an entity and/or method from which or by which a covered swap entity obtains prices for swaps or values for other inputs used in a margin calculation.

Depository institution has the meaning specified in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

Eligible collateral means collateral described in § 23.157.

Eligible master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the covered swap entity the right to accelerate, terminate, and close out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), Title II of the Dodd-Frank Act (12 U.S.C. 4617) or under any similar insolvency law applicable to U.S. Government-sponsored enterprises (12 U.S.C. 2183 and 2279cc);

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(4) A covered swap entity that relies on the agreement for purposes of calculating the margin required by this part:

(i) Conducts sufficient legal review (and maintains sufficient written documentation of that legal review) to conclude with a well-founded basis that:

(A) The agreement meets the requirements of paragraphs (1) through (3) of this definition; and

(B) In the event of a legal challenge (including one resulting from default or from receivership, insolvency, liquidation, or similar proceeding) the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions; and

(ii) Establishes and maintains written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of this definition.

Financial end user means

(1) A counterparty that is not a swap entity and that is:

(i) A bank holding company or an affiliate thereof; a savings and loan holding company; or a nonbank financial institution supervised by the Board of Governors of the Federal Reserve System under Title I of the Dodd-Frank Act (12 U.S.C. 5323);

(ii) A depository institution; a foreign bank; a Federal credit union or State credit union as defined in section 2 of the Federal Credit Union Act (12 U.S.C. 1752(1) and (6)); an institution that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(D)); an industrial loan company, an industrial bank, or other similar institution described in section 2(c)(2)(H) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(H));

(iii) An entity that is state-licensed or registered as:

(A) A credit or lending entity, including a finance company; money lender; installment lender; consumer lender or lending company; mortgage lender, broker, or bank; motor vehicle title pledge lender; payday or deferred deposit lender; premium finance company; commercial finance or lending company; or commercial mortgage company; except entities registered or licensed solely on account of financing the entity's direct sales of goods or services to customers;

(B) A money services business, including a check casher; money transmitter; currency dealer or exchange; or money order or traveler's check issuer;

(iv) A regulated entity as defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20)) and any entity for which the Federal Housing Finance Agency or its successor is the primary federal regulator;

(v) Any institution chartered and regulated by the Farm Credit Administration in accordance with the Farm Credit Act of 1971, as amended, 12 U.S.C. 2001 *et seq.;*

(vi) A securities holding company; a broker or dealer; an investment adviser as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)); an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

(vii) A private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80–b–2(a)); an entity that would be an investment company under section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) but for section 3(c)(5)(C); or an entity that is deemed not to be an investment company under section 3 of the Investment Company Act of 1940 pursuant to Investment Company Act Rule 3a–7 of the Securities and Exchange Commission (17 CFR 270.3a–7);

(viii) A commodity pool, a commodity pool operator, a commodity trading advisor, or a futures commission merchant;

(ix) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002);

(x) An entity that is organized as an insurance company, primarily engaged in writing insurance or reinsuring risks underwritten by insurance companies, or is subject to supervision as such by a State insurance regulator or foreign insurance regulator;

(xi) An entity that is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in loans, securities, swaps, funds or other assets for resale or other disposition or otherwise trading in loans, securities, swaps, funds or other assets;

(xii) A person that would be a financial entity described in paragraphs (1)(i)–(xi) of this definition if it were organized under the laws of the United States or any State thereof; or

(xiii) Notwithstanding paragraph (2) of this definition, any other entity that the Commission determines should be treated as a financial end user.

(2) The term ''financial end user'' does not include any counterparty that is:

(i) A sovereign entity;

(ii) A multilateral development bank;

(iii) The Bank for International Settlements;

(iv) An entity that is exempt from the definition of financial entity pursuant to section 2(h)(7)(C)(iii) of the Act and implementing regulations; or

(v) An affiliate that qualifies for the exemption from clearing pursuant to section 2(h)(7)(D) of the Act.

Foreign bank has the meaning specified in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101).

Foreign exchange forward and foreign exchange swap mean any foreign exchange forward, as that term is defined in section 1a(24) of the Act, and foreign exchange swap, as that term is defined in section 1a(25) of the Act.

Initial margin means collateral collected or posted to secure potential future exposure under one or more uncleared swaps.

Initial margin threshold amount means an aggregate credit exposure of $65 million resulting from all uncleared swaps and uncleared security-based swaps between a covered swap entity and its affiliates, and a covered counterparty and its affiliates.

Major currencies means

(1) United States Dollar (USD);

(2) Canadian Dollar (CAD);

(3) Euro (EUR);

(4) United Kingdom Pound (GBP);

(5) Japanese Yen (JPY);

(6) Swiss Franc (CHF);

(7) New Zealand Dollar (NZD);

(8) Australian Dollar (AUD);

(9) Swedish Kronor (SEK);

(10) Danish Kroner (DKK);

(11) Norwegian Krone (NOK); and

(12) Any other currency designated by the Commission.

Market intermediary means

(1) A securities holding company;

(2) A broker or dealer;

(3) A futures commission merchant;

(4) A swap dealer; or

(5) A security-based swap dealer.

Material swaps exposure for an entity means that the entity and its affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties for June, July and August of the previous calendar year that exceeds $3 billion, where such amount is calculated only for business days.

Minimum transfer amount means an initial margin or variation margin amount under which no actual transfer of funds is required. The minimum transfer amount shall be $650,000 or such other amount as the Commission may establish by order.

Multilateral development bank means

(1) The International Bank for Reconstruction and Development;

(2) The Multilateral Investment Guarantee Agency;

(3) The International Finance Corporation;

(4) The Inter-American Development Bank;

(5) The Asian Development Bank;

(6) The African Development Bank;

(7) The European Bank for Reconstruction and Development;

(8) The European Investment Bank;

(9) The European Investment Fund;

(10) The Nordic Investment Bank;

(11) The Caribbean Development Bank;

(12) The Islamic Development Bank;

(13) The Council of Europe Development Bank; and

(14) Any other entity that provides financing for national or regional

development in which the U.S. government is a shareholder or contributing member or which the Commission determines poses comparable credit risk.

Non-financial end user means a counterparty that is not a swap dealer, a major swap participant, or a financial end user.

Prudential regulator has the meaning specified in section 1a(39) of the Act.

Savings and loan holding company has the meaning specified in section 10(n) of the Home Owners' Loan Act (12 U.S.C. 1467a(n)).

Securities holding company has the meaning specified in section 618 of the Dodd-Frank Act (12 U.S.C. 1850a).

Security-based swap has the meaning specified in section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)).

Sovereign entity means a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government.

State means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

Subsidiary means a company that is controlled by another company.

Swap entity means a swap dealer or major swap participant.

Uncleared security-based swap means a security-based swap that is not cleared by a clearing agency registered with the Securities and Exchange Commission.

Uncleared swap means a swap that is not cleared by a registered derivatives clearing organization, or by a clearing organization that has received a no-action letter or other exemptive relief from the Commission permitting it to clear certain swaps for U.S. persons without being registered as a derivatives clearing organization.

U.S. Government-sponsored enterprise means an entity established or chartered by the U.S. government to serve public purposes specified by federal statute but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government.

Variation margin means a payment by a party to its counterparty to meet an obligation under one or more swaps between the parties as a result of a change in value of such obligations since the trade was executed or the previous time such payment was made.

§ 23.152 Collection and posting of initial margin.

(a) *Collection*—(1) *Initial obligation.* On or before the business day after execution of an uncleared swap between a covered swap entity and a covered counterparty, the covered swap entity shall collect initial margin from the covered counterparty in an amount equal to or greater than an amount calculated pursuant to § 23.154, in a form that complies with § 23.156, and pursuant to custodial arrangements that comply with § 23.157.

(2) *Continuing obligation.* The covered swap entity shall continue to hold initial margin from the covered counterparty in an amount equal to or greater than an amount calculated each business day pursuant to § 23.154, in a form that complies with § 23.156, and pursuant to custodial arrangements that comply with § 23.157, until such uncleared swap is terminated or expires.

(b) *Posting*—(1) *Initial obligation.* On or before the business day after execution of an uncleared swap between a covered swap entity and a covered counterparty that is a financial end user, the covered swap entity shall post initial margin with the covered counterparty in an amount equal to or greater than an amount calculated pursuant to § 23.154, in a form that complies with § 23.156, and pursuant to custodial arrangements that comply with § 23.157.

(2) *Continuing obligation.* The covered swap entity shall continue to post initial margin with the covered counterparty in an amount equal to or greater than an amount calculated each business day pursuant to § 23.154, in a form that complies with § 23.156, and pursuant to custodial arrangements that comply with § 23.157, until such uncleared swap is terminated or expires.

(c) *Satisfaction of collection and posting requirements.* A covered swap entity shall not be deemed to have violated its obligation to collect or to post initial margin from a covered counterparty if:

(1) The covered counterparty has refused or otherwise failed to provide, or to accept, the required initial margin to, or from, the covered swap entity; and

(2) The covered swap entity has:

(i) Made the necessary efforts to collect or to post the required initial margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, including pursuant to § 23.504(b)(4), if applicable, or has otherwise demonstrated upon request to the satisfaction of the Commission that it has made appropriate efforts to collect or to post the required initial margin; or

(ii) Commenced termination of the uncleared swap with the covered counterparty promptly following the applicable cure period and notification requirements.

§ 23.153 Collection and payment of variation margin.

(a) *Initial obligation.* On or before the business day after execution of an uncleared swap between a covered swap entity and a counterparty that is a swap entity or a financial end user, the covered swap entity shall collect variation margin from, or pay variation margin to, the counterparty as calculated pursuant to § 23.155 and in a form that complies with § 23.156.

(b) *Continuing obligation.* The covered swap entity shall continue to collect variation margin from, or to pay variation margin to, the counterparty as calculated each business day pursuant to § 23.155 and in a form that complies with § 23.156 each business day until such uncleared swap is terminated or expires.

(c) *Netting.* To the extent that more than one uncleared swap is executed pursuant to an eligible master netting agreement between a covered swap entity and a counterparty, a covered swap entity may calculate and comply with the variation margin requirements of this section on an aggregate basis with respect to all uncleared swaps governed by such agreement. If the agreement covers uncleared swaps entered into before the applicable compliance date set forth in § 23.159, those swaps must be included in the aggregate for the purposes of calculation and complying with the variation margin requirements of this section.

(d) *Satisfaction of collection and payment requirements.* A covered swap entity shall not be deemed to have violated its obligation to collect or to pay variation margin from a counterparty if:

(1) The counterparty has refused or otherwise failed to provide or to accept the required variation margin to or from the covered swap entity; and

(2) The covered swap entity has:

(i) Made the necessary efforts to collect or to pay the required variation margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, or has otherwise demonstrated upon request to the satisfaction of the Commission that it has made appropriate efforts to collect or to pay the required variation margin; or

(ii) Commenced termination of the uncleared swap with the counterparty promptly following the applicable cure period and notification requirements.

§ 23.154 Calculation of initial margin.

(a) *Means of calculation.* (1) Each business day each covered swap entity shall calculate an initial margin amount to be collected from each covered counterparty using:

(i) A risk-based model that meets the requirements of paragraph (b) of this section; or

(ii) The table-based method set forth in paragraph (c) of this section.

(2) Each business day each covered swap entity shall calculate an initial margin amount to be posted with each covered counterparty that is a financial end user using:

(i) A risk-based model that meets the requirements of paragraph (b) of this section; or

(ii) The table-based method set forth in paragraph (c) of this section.

(3) Each covered swap entity may reduce the amounts calculated pursuant to paragraphs (a)(1) and (2) of this section by the initial margin threshold amount provided that the reduction does not include any portion of the initial margin threshold amount already applied by the covered swap entity or its affiliates in connection with other uncleared swaps or uncleared security-based swaps with the counterparty or its affiliates.

(4) The amounts calculated pursuant to paragraph (a)(3) of this section shall not be less than zero.

(5) A covered swap entity shall not be required to collect or to post an amount below the minimum transfer amount.

(6) For risk management purposes, each business day each covered swap entity shall calculate a hypothetical initial margin requirement for each swap for which the counterparty is a non-financial end user that has material swaps exposure to the covered swap entity as if the counterparty were a covered counterparty and compare that amount to any initial margin required pursuant to the margin documentation.

(b) *Risk-based Models*—(1) *Commission approval.* (i) A covered swap entity shall obtain the written approval of the Commission to use a model to calculate the initial margin required in this part.

(ii) A covered swap entity shall demonstrate that the model satisfies all of the requirements of this section on an ongoing basis.

(iii) A covered swap entity shall notify the Commission in writing 60 days prior to:

(A) Extending the use of an initial margin model that has been approved to an additional product type;

(B) Making any change to any initial margin model that has been approved that would result in a material change in the covered swap entity's assessment of initial margin requirements; or

(C) Making any material change to modeling assumptions used by the initial margin model.

(iv) The Commission may rescind its approval of the use of any initial margin model, in whole or in part, or may impose additional conditions or requirements if the Commission determines, in its sole discretion, that the model no longer complies with this section.

(2) *Applicability to multiple swaps.* To the extent that more than one uncleared swap is executed pursuant to an eligible master netting agreement between a covered swap entity and a covered counterparty, a covered swap entity may use its initial margin model to calculate and comply with the initial margin requirements on an aggregate basis with respect to all uncleared swaps governed by such agreement. If the agreement covers uncleared swaps entered into before the applicable compliance date, those swaps must be included in the aggregate in the initial margin model for the purposes of calculating and complying with the initial margin requirements.

(3) *Elements of the model.* (i) The model shall calculate an amount of initial margin that is equal to the potential future exposure of the uncleared swap or netting set of uncleared swaps covered by an eligible master netting agreement. Potential future exposure is an estimate of the one-tailed 99 percent confidence interval for an increase in the value of the uncleared swap or netting set of uncleared swaps due to an instantaneous price shock that is equivalent to a movement in all material underlying risk factors, including prices, rates, and spreads, over a holding period equal to the shorter of ten business days or the maturity of the swap.

(ii) All data used to calibrate the model shall be based on an equally weighted historical observation period of at least one year and not more than five years and must incorporate a period of significant financial stress for each broad asset class that is appropriate to the uncleared swaps to which the initial margin model is applied.

(iii) The model shall use risk factors sufficient to measure all material price risks inherent in the transactions for which initial margin is being calculated. The risk categories shall include, but should not be limited to, foreign exchange or interest rate risk, credit risk, equity risk, agricultural commodity risk, energy commodity risk, metal commodity risk, and other commodity risk, as appropriate. For material exposures in significant currencies and markets, modeling techniques shall capture spread and basis risk and shall incorporate a sufficient number of segments of the yield curve to capture differences in volatility and imperfect correlation of rates along the yield curve.

(iv) In the case of an uncleared cross-currency swap, the model need not recognize any risks or risk factors associated with the fixed, physically-settled foreign exchange transactions associated with the exchange of principal embedded in the cross-currency swap. The model shall recognize all material risks and risk factors associated with all other payments and cash flows that occur during the life of the uncleared cross-currency swap.

(v) The model may calculate initial margin for an uncleared swap or netting set of uncleared swaps covered by an eligible master netting agreement. It may reflect offsetting exposures, diversification, and other hedging benefits for uncleared swaps that are governed by the same eligible master netting agreement by incorporating empirical correlations within the following broad risk categories, provided the covered swap entity validates and demonstrates the reasonableness of its process for modeling and measuring hedging benefits: agriculture, credit, energy, equity, foreign exchange/interest rate, metals, and other. Empirical correlations under an eligible master netting agreement may be recognized by the model within each broad risk category, but not across broad risk categories.

(vi) If the model does not explicitly reflect offsetting exposures, diversification, and hedging benefits between subsets of uncleared swaps within a broad risk category, the covered swap entity shall calculate an amount of initial margin separately for each subset of uncleared swaps for which offsetting exposures, diversification, and other hedging benefits are explicitly recognized by the model. The sum of the initial margin amounts calculated for each subset of uncleared swaps within a broad risk category shall be used to determine the aggregate initial margin due from the counterparty for the portfolio of uncleared swaps within the broad risk category.

(vii) The sum of the initial margins calculated for each broad risk category shall be used to determine the aggregate initial margin due from the counterparty.

(viii) The model shall not permit the calculation of any initial margin amount to be offset by, or otherwise take into account, any initial margin that may be owed or otherwise payable by the covered swap entity to the counterparty.

(ix) The model shall include all material risks arising from the nonlinear price characteristics of option positions or positions with embedded optionality and the sensitivity of the market value of the positions to changes in the volatility of the underlying rates, prices, or other material risk factors.

(x) The covered swap entity shall not omit any risk factor from the calculation of its initial margin that the covered swap entity uses in its model unless it has first demonstrated to the satisfaction of the Commission that such omission is appropriate.

(xi) The covered swap entity shall not incorporate any proxy or approximation used to capture the risks of the covered swap entity's actual swaps unless it has first demonstrated to the satisfaction of the Commission that such proxy or approximation is appropriate.

(xii) The covered swap entity shall have a rigorous and well-defined process for re-estimating, re-evaluating, and updating its internal models to ensure continued applicability and relevance.

(xiii) The covered swap entity shall review and, as necessary, revise the data used to calibrate the model at least monthly, and more frequently as market conditions warrant, ensuring that the data incorporate a period of significant financial stress appropriate to the uncleared swaps to which the model is applied.

(xiv) The level of sophistication of the initial margin model shall be commensurate with the complexity of the swaps to which it is applied. In calculating an initial margin amount, the model may make use of any of the generally accepted approaches for modeling the risk of a single instrument or portfolio of instruments.

(xv) The Commission may in its sole discretion require a covered swap entity using a model to collect a greater amount of initial margin than that determined by the covered swap entity's model if the Commission determines that the additional collateral is appropriate due to the nature, structure, or characteristics of the covered swap entity's transactions or is commensurate with the risks associated with the transaction.

(4) *Periodic review.* A covered swap entity shall periodically, but no less frequently than annually, review its model in light of developments in financial markets and modeling technologies, and enhance the model as appropriate to ensure that it continues to meet the requirements for approval in this section.

(5) *Control, oversight, and validation mechanisms.* (i) The covered swap entity shall maintain a risk management unit in accordance with § 23.600(c)(4)(i) that is independent from the business trading unit (as defined in § 23.600).

(ii) The covered swap entity's risk control unit shall validate its model prior to implementation and on an ongoing basis. The covered swap entity's validation process shall be independent of the development, implementation, and operation of the model, or the validation process shall be subject to an independent review of its adequacy and effectiveness. The validation process shall include:

(A) An evaluation of the conceptual soundness of (including developmental evidence supporting) the model;

(B) An ongoing monitoring process that includes verification of processes and benchmarking by comparing the covered swap entity's model outputs (estimation of initial margin) with relevant alternative internal and external data sources or estimation techniques including benchmarking against observable margin standards to ensure that the initial margin is not less than what a derivatives clearing organization would require for similar cleared transactions; and

(C) An outcomes analysis process that includes back testing the model.

(iii) If the validation process reveals any material problems with the model, the covered swap entity shall notify the Commission of the problems, describe to the Commission any remedial actions being taken, and adjust the model to insure an appropriately conservative amount of required initial margin is being calculated.

(iv) In accordance with § 23.600(e)(2), the covered swap entity shall have an internal audit function independent of the business trading unit and the risk management unit that at least annually assesses the effectiveness of the controls supporting the model measurement systems, including the activities of the business trading units and risk control unit, compliance with policies and procedures, and calculation of the covered swap entity's initial margin requirements under this part. At least annually, the internal audit function shall report its findings to the covered swap entity's governing body, senior management, and chief compliance officer.

(6) *Documentation.* The covered swap entity shall adequately document all material aspects of its model, including management and valuation of uncleared swaps to which it applies, the control, oversight, and validation of the model, any review processes and the results of such processes.

(7) *Escalation procedures.* The covered swap entity must adequately document authorization procedures, including escalation procedures that require review and approval of any change to the initial margin calculation under the model, demonstrable analysis that any basis for any such change is consistent with the requirements of this section, and independent review of such demonstrable analysis and approval.

(c) *Table-based method.* If a model meeting the standards set forth in paragraph (b) of this section is not used, initial margin shall be calculated in accordance with this paragraph.

(1) *Standardized initial margin schedule.*

Asset class	Initial margin requirement (% of notional exposure)
Credit: 0–2 year duration	2
Credit: 2–5 year duration	5
Credit: 5+ year duration	10
Commodity	15
Equity	15
Foreign Exchange/Currency	6
Cross Currency Swaps: 0–2 year duration	1
Cross Currency Swaps: 2–5 year duration	2
Cross currency Swaps: 5+ year duration	4
Interest Rate: 0–2 year duration	1
Interest Rate: 2–5 year duration	2
Interest Rate: 5+ year duration	4
Other	15

(2) *Net to gross ratio adjustment.* (i) For multiple uncleared swaps subject to an eligible master netting agreement, the initial margin amount under the standardized table shall be computed according to this paragraph.

(ii) Initial Margin = $0.4 \times$ Gross Initial Margin + $0.6 \times$ Net-to-Gross Ratio $\times$ Gross Initial Margin, where

(A) Gross Initial Margin = the sum of the product of each uncleared swap's effective notional amount and the gross initial margin requirement for all uncleared swaps subject to the eligible master netting agreement;

(B) Net-to-Gross Ratio = the ratio of the net current replacement cost to the gross current replacement cost;

(C) Gross Current Replacement cost = the sum of the replacement cost for each uncleared swap subject to the eligible master netting agreement for which the cost is positive; and

(D) Net Current Replacement Cost = the total replacement cost for all uncleared swaps subject to the eligible master netting agreement.

§ 23.155 Calculation of variation margin.

(a) *Means of calculation.* (1) Each business day each covered swap entity shall calculate variation margin for itself and for each counterparty that is a swap entity or a financial end user using a methodology and inputs that to the maximum extent practicable rely on recently-executed transactions, valuations provided by independent third parties, or other objective criteria.

(2) Each covered swap entity shall have in place alternative methods for determining the value of an uncleared swap in the event of the unavailability or other failure of any input required to value a swap.

(3) For risk management purposes, each business day each covered swap entity shall calculate a hypothetical variation margin requirement for each swap for which the counterparty is a non-financial end user that has material swaps exposure to the covered counterparty as if the counterparty were a covered swap entity and compare that amount to any variation margin required pursuant to the margin documentation.

(b) *Control mechanisms.* (1) Each covered swap entity shall create and maintain documentation setting forth the variation methodology with sufficient specificity to allow the counterparty, the Commission, and any applicable prudential regulator to calculate a reasonable approximation of the margin requirement independently.

(2) Each covered swap entity shall evaluate the reliability of its data sources at least annually, and make adjustments, as appropriate.

(3) The Commission at any time may require a covered swap entity to provide further data or analysis concerning the methodology or a data source, including:

(i) An explanation of the manner in which the methodology meets the requirements of this section;

(ii) A description of the mechanics of the methodology;

(iii) The theoretical basis of the methodology;

(iv) The empirical support for the methodology; and

(v) The empirical support for the assessment of the data sources.

§ 23.156 Forms of margin.

(a) *Initial margin*—(1) *Eligible collateral.* A covered swap entity shall collect and post as initial margin for trades with a covered counterparty only the following assets:

(i) U.S. dollars;

(ii) A major currency;

(iii) A currency in which payment obligations under the swap are required to be settled;

(iv) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of Treasury;

(v) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a U.S. government agency (other than the U.S. Department of Treasury) whose obligations are fully guaranteed by the full faith and credit of the U.S. government;

(vi) A publicly traded debt security issued by, or an asset-backed security fully guaranteed as to the timely payment of principal and interest by, a U.S. government-sponsored enterprise that is operating with capital support or another form of direct financial assistance received from the U.S. government that enables the repayments of the government-sponsored enterprise's eligible securities; or

(vii) A security that is issued by, or fully guaranteed as to the payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20 percent risk weight under the capital rules applicable to swap dealers subject to regulation by a prudential regulator;

(viii) A security that is issued by, or fully guaranteed as to the payment of principal and interest by, the Bank for International Settlements, the International Monetary Fund, or a multilateral development bank;

(ix) Other publicly-traded debt that has been deemed acceptable as initial margin by a prudential regulator; or

(x) A publicly traded common equity security that is included in:

(A) The Standard & Poor's Composite 1500 Index or any other similar index of liquid and readily marketable equity securities as determined by the Commission; or

(B) An index that a covered swap entity's supervisor in a foreign jurisdiction recognizes for purposes of including publicly traded common equity as initial margin under applicable regulatory policy, if held in that foreign jurisdiction; or

(xi) Gold.

(2) *Prohibition of certain assets.* A covered swap entity may not collect or post as initial margin any asset that is a security issued by:

(i) The party providing such asset or an affiliate of that party,

(ii) A bank holding company, a savings and loan holding company, a foreign bank, a depository institution, a market intermediary, a company that would be any of the foregoing if it were organized under the laws of the United States or any State, or an affiliate of any of the foregoing institutions, or

(iii) A U.S. government-sponsored enterprise after the termination of capital support or another form of direct financial assistance received from the U.S. government that enables the repayments of the government-sponsored enterprise's eligible securities unless:

(A) The security meets the requirements of paragraph (a)(1)(iv) of this section;

(B) The security meets the requirements of paragraph (a)(1)(vii) of this section; or

(C) The security meets the requirements of paragraph (a)(1)(viii) of this section.

(3) *Haircuts.* (i) Each covered swap entity shall apply haircuts to any asset posted or received as initial margin under this section that reflect the credit and liquidity characteristics of the asset.

(ii) At a minimum, each covered swap entity shall apply haircuts to any asset posted or received as initial margin under this section in accordance with the following table:

STANDARDIZED HAIRCUT SCHEDULE

Cash in same currency as swap obligation	0.0
Eligible government and related debt (e.g., central bank, multilateral development bank, GSE securities identified in paragraph (a)(1)(iv) of this section): Residual maturity less than one-year	0.5
Eligible government and related debt (e.g., central bank, multilateral development bank, GSE securities identified in paragraph (a)(1)(iv) of this section): Residual maturity between one and five years	2.0
Eligible government and related debt (e.g., central bank, multilateral development bank, GSE securities identified in paragraph (a)(1)(iv) of this section): Residual maturity greater than five years	4.0
Eligible corporate debt (including eligible GSE debt securities not identified in paragraph (a)(1)(iv) of this section): Residual maturity less than one-year	1.0
Eligible corporate debt (including eligible GSE debt securities not identified in paragraph (a)(1)(iv) of this section): Residual maturity between one and five years	4.0
Eligible corporate debt (including eligible GSE debt securities not identified in paragraph (a)(1)(iv) of this section): Residual maturity greater than five years	8.0
Equities included in S&P 500 or related index	15.0

STANDARDIZED HAIRCUT SCHEDULE—Continued

Equities included in S&P 1500 Composite or related index but not S&P 500 or related index	25.0
Gold	15.0
Additional (additive) haircut on asset in which the currency of the swap obligation differs from that of the collateral asset	8.0

(iii) The value of initial margin collateral that is calculated according to the schedule in paragraph (a)(3)(ii) of this section will be computed as follows: The value of initial margin collateral for any collateral asset class will be computed as the product of the total value of collateral in any asset class and one minus the applicable haircut expressed in percentage terms. The total value of all initial margin collateral is calculated as the sum of the value of each type of collateral asset.

(4) *Monitoring Obligation.* A covered swap entity shall monitor the market value and eligibility of all collateral collected and held to satisfy initial margin required by this part. To the extent that the market value of such collateral has declined, the covered swap entity shall promptly collect such additional eligible collateral as is necessary to bring itself into compliance with the margin requirements of this part. To the extent that the collateral is no longer eligible, the covered swap entity shall promptly obtain sufficient eligible replacement collateral to comply with this part.

(5) *Excess initial margin.* A covered swap entity may collect initial margin that is not required pursuant to this part in any form of collateral.

(b) *Variation margin*—(1) *Eligible assets.* A covered swap entity shall pay and collect as variation margin to or from a covered counterparty only cash in the form of:

(i) U.S. dollars; or

(ii) A currency in which payment obligations under the swap are required to be settled.

(2) *Collection obligation.* A covered swap entity shall not be deemed to have violated its obligation under this paragraph to collect variation margin if:

(i) The counterparty has refused or otherwise failed to provide the variation margin to the covered swap entity; and

(ii) The covered swap entity:

(A) Has made the necessary efforts to collect the variation margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, including § 23.504(b), if applicable, or has otherwise demonstrated upon request to the satisfaction of the Commission that it has made appropriate efforts to collect the variation margin; or

(B) Has commenced termination of the swap or security-based swap with the counterparty.

§ 23.157 Custodial arrangements.

(a) *Initial margin posted by covered swap entities.* Each covered swap entity that posts initial margin with respect to an uncleared swap shall require that all funds or other property that the covered swap entity provides as initial margin be held by one or more custodians that are not affiliates of the covered swap entity or the counterparty.

(b) *Initial margin collected by covered swap entities.* Each covered swap entity that collects initial margin required by § 23.152 with respect to an uncleared swap shall require that such initial margin be held at one or more custodians that are not affiliates of the covered swap entity or the counterparty.

(c) *Custodial agreement.* Each covered swap entity shall enter into an agreement with each custodian that holds funds pursuant to paragraphs (a) or (b) of this section that:

(1) Prohibits the custodian from rehypothecating, repledging, reusing, or otherwise transferring (through securities lending, repurchase agreement, reverse repurchase agreement or other means) the funds or other property held by the custodian;

(2) Notwithstanding paragraph (c)(1) of this section, with respect to collateral posted or collected pursuant to § 23.152, requires the posting party, when it substitutes or directs the reinvestment of posted collateral held by the custodian:

(i) To substitute only funds or other property that are in a form that meets the requirements of § 23.156 and in an amount that meets the requirements of § 23.152, subject to applicable haircuts; and

(ii) To reinvest funds only in assets that are in a form that meets the requirements of § 23.156 and in an amount that meets the requirements of § 23.152, subject to applicable haircuts;

(3) Is legal, valid, binding, and enforceable under the laws of all relevant jurisdictions including in the event of bankruptcy, insolvency, or a similar proceeding.

§ 23.158 Margin documentation.

(a) *General requirement.* Each covered swap entity shall execute documentation with each counterparty that complies with the requirements of § 23.504 and that complies with this section. For uncleared swaps between a covered swap entity and a covered counterparty, the documentation shall provide the covered swap entity with the contractual right and obligation to exchange initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by §§ 23.150 through 23.159. For uncleared swaps between a covered swap entity and a non-financial entity, the documentation shall specify whether initial and/or variation margin will be exchanged and, if so, the documentation shall comply with paragraph (b) of this section.

(b) *Contents of the documentation.* The margin documentation shall specify the following:

(1) The methodology and data sources to be used to value uncleared swaps and collateral and to calculate initial margin for uncleared swaps entered into between the covered swap entity and the counterparty;

(2) The methodology and data sources to be used to value positions and to calculate variation margin for uncleared swaps entered into between the covered swap entity participant and the counterparty;

(3) The procedures by which any disputes concerning the valuation of uncleared swaps, or the valuation of assets posted as initial margin or paid as variation margin may be resolved;

(4) Any thresholds below which initial margin need not be posted by the covered swap entity and/or the counterparty; and

(5) Any thresholds below which variation margin need not be paid by the covered swap entity and/or the counterparty.

§ 23.159 Compliance dates.

(a) Covered swap entities must comply with the minimum margin requirements for uncleared swaps on or before the following dates for uncleared swaps entered into on or after the following dates:

(1) December 1, 2015 for the requirements in § 23.153 for variation margin.

(2) December 1, 2015 for the requirements in § 23.152 for initial margin for any uncleared swaps where both the covered swap entity combined with all its affiliates and its counterparty combined with all its affiliates, have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps in June, July, and August 2015 that exceeds $4 trillion, where such amounts are calculated only for business days.

(3) December 1, 2016 for the requirements in § 23.152 for initial margin for any uncleared swaps where

both the covered swap entity combined with all its affiliates and its counterparty combined with all its affiliates, have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps in June, July and August 2016 that exceeds $3 trillion, where such amounts are calculated only for business days.

(4) December 1, 2017 for the requirements in § 23.152 for initial margin for any uncleared swaps where both the covered swap entity combined with all its affiliates and its counterparty combined with all its affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps in June, July and August 2017 that exceeds $2 trillion, where such amounts are calculated only for business days.

(5) December 1, 2018 for the requirements in § 23.152 for initial margin for any uncleared swaps where both the covered swap entity combined with all its affiliates and its counterparty combined with all its affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps in June, July and August 2018 that exceeds $1 trillion, where such amounts are calculated only for business days.

(6) December 1, 2019 for the requirements in § 23.152 for initial margin for any other covered swap entity with respect to uncleared swaps entered into with any other counterparty.

(b) Once a covered swap entity and its counterparty must comply with the margin requirements for uncleared swaps based on the compliance dates in paragraph (a) of this section, the covered swap entity and its counterparty shall remain subject to the requirements of this subpart.

§§ 23.160–23.199 [Reserved]

■ 3. In § 23.701 revise paragraphs (a)(1), (d), and (f) to read as follows:

§ 23.701 Notification of right to segregation.

(a) * * *

(1) Notify each counterparty to such transaction that the counterparty has the right to require that any Initial Margin the counterparty provides in connection with such transaction be segregated in accordance with §§ 23.702 and 23.703 except in those circumstances where segregation is mandatory pursuant to § 23.157;

* * * * *

(d) Prior to confirming the terms of any such swap, the swap dealer or major swap participant shall obtain from the counterparty confirmation of receipt by the person specified in paragraph (c) of this section of the notification specified in paragraph (a) of this section, and an election, if applicable, to require such segregation or not. The swap dealer or major swap participant shall maintain such confirmation and such election as business records pursuant to § 1.31 of this chapter.

* * * * *

(f) A counterparty's election, if applicable, to require segregation of Initial Margin or not to require such segregation, may be changed at the discretion of the counterparty upon written notice delivered to the swap dealer or major swap participant, which changed election shall be applicable to all swaps entered into between the parties after such delivery.

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

■ 4. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2(a)(12), 12a, 13(c), 13(d), 13(e), and 16(b).

■ 5. In § 140.93, add paragraph (a)(6) to read as follows:

§ 140.93 Delegation of authority to the Director of the Division of Swap Dealer and Intermediary Oversight.

(a) * * *

(6) All functions reserved to the Commission in §§ 23.150 through 23.159 of this chapter.

* * * * *

Issued in Washington, DC, on September 23, 2014, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Commission Voting Summary, Chairman's Statement, and Commissioner's Statement

Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Wetjen, Bowen, and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman Timothy G. Massad

I support this proposed rule on margin requirements for uncleared swaps.

A key mandate of the Dodd-Frank Act was central clearing of swaps. This is a significant tool to monitor and mitigate risk, and we have already succeeded in increasing the overall percentage of the market that is cleared from an estimated 17% in 2007 to 60% last month, when measured by notional amount.

But cleared swaps are only part of the market. Uncleared, bilateral swap transactions will continue to be an important part of the derivatives market. This is so for a variety of reasons. Sometimes, commercial risks cannot be hedged sufficiently through clearable swap contracts. Therefore market participants must craft more tailored contracts that cannot be cleared. In addition, certain products may lack sufficient liquidity to be centrally risk-managed and cleared. This may be true even for products that have been in existence for some time. And there will—and always should be—innovation in the market, which will lead to new products.

That is why margin for uncleared swaps is important. It is a means to mitigate the risk of default and therefore the potential risk to the financial system as a whole. To appreciate the importance of the rule being proposed, we need only recall how Treasury and the Federal Reserve had to commit $182 billion to AIG, because its uncleared swap activities threatened to bring down our financial system.

The proposed rule requires swap dealers and major swap participants to post and collect margin in their swaps with one another. They must also do so in their swaps with financial entities, if the level of activity is above certain thresholds. The proposal does not require commercial end-users to post or collect margin, nor does it require any swap dealer or major swap participant to collect margin from or post margin to commercial end-users. This is an important point.

Today's proposal on margin also reflects the benefit of substantial collaboration between our staff and our colleagues at the Federal Reserve, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, as well as significant public comment. The Dodd-Frank Act directs each of the prudential regulators to propose rules on margin for the entities for which it is the primary regulator, whereas the CFTC is directed to propose a rule for other

entities engaging in uncleared swap transactions. The Dodd-Frank Act also directed us to harmonize our rules as much as possible. Today's proposed rule is very similar to the proposal of the prudential regulators that was published recently. I want to again thank our staff, as well as the staffs of the prudential regulators, for working together so well to accomplish that task.

We have also sought to harmonize our proposal with rules being developed in Europe and Asia. Our proposed rule is largely consistent with the standards proposed by Basel Committee on Banking Supervision and the International Organization of Securities Commissions, and we have been in touch with overseas regulators as we developed our proposal.

The importance of international harmonization cannot be understated. It is particularly important to reach harmonization in the area of margin for uncleared swaps, because this is a new requirement and we do not want to create the potential for regulatory arbitrage in the market by creating unnecessary differences. Margin for uncleared swaps goes hand in hand with the global mandates to clear swaps. Imposing margin on uncleared swaps will level the playing field between cleared and uncleared swaps and remove any incentive not to clear swaps that can be cleared.

Proposing this rule is an important step in our effort to finish the job of implementing the Dodd-Frank Act and will help us achieve the full benefit of the new regulatory framework, while at the same time protecting the interests of—and minimizing the burdens on—commercial end-users who depend on the derivatives markets to hedge normal business risks.

We recognize that more stringent margin requirements impose costs on market participants, and therefore the proposal includes a detailed cost-benefit analysis. I believe the proposed rule balances the inherent trade-off between mitigating systemic risk and minimizing costs on individual participants. I look forward to having public feedback on that analysis, as well as on the proposal as a whole.

Appendix 3—Statement of Commissioner J. Christopher Giancarlo

I support the issuance of the proposed rules for uncleared margin. I look forward to reviewing well-considered, responsive and informative comments from the public. Seeking further public comment on this proposal is necessary given the passage of time and the further deliberations with our fellow regulators since the publishing of our 2011 proposal. For the same reasons, I urge the Commission to re-propose capital requirements for swap dealers and major swap participants, which are closely linked to the uncleared margin rules.

Uncleared over-the-counter swaps (OTC) and derivatives are vital to the U.S. economy. Used properly, they enable American companies and the banks they borrow from to manage changing commodity and energy prices, fluctuating currency and interest rates, and credit default exposure. They allow our state and local governments to manage their obligations and our pension funds to support healthy retirements. Uncleared swaps serve a key role in American business planning and risk management that cannot be filled by cleared derivatives. They do so by allowing businesses to avoid basis risk and obtain hedge accounting treatment for more complex, non-standardized exposures. While much of the swaps and OTC derivatives markets will eventually be cleared—a transition I have long supported—uncleared swaps will remain an important tool for customized risk management by businesses, governments, asset managers and other institutions whose operations are essential to American economic growth.

Advance Notice of Proposed Rulemaking: Cross-Border

I support the Commission's decision to issue an advance notice of proposed rulemaking to determine how the uncleared margin rule should apply extraterritorially. I have long advocated that the Commission take a holistic, global approach to the cross-border application of its rules. This approach should prioritize the critical need for international harmony and certainty for American businesses and other market participants. It is undeniable that the lack of such certainty in the Commission's cross-border framework is causing fragmentation of what were once global markets, increasing systemic risk rather than diminishing it. I therefore applaud the Commission's decision to seek public comment on the most optimal cross-border framework with respect to uncleared margin.

In light of the recent decision from the U.S. District Court for the District of Columbia holding that the Commission's cross-border guidance is non-binding and that the Commission will have to justify the cross-border application of its rules each time it brings an enforcement action,[1] it is important that the Commission provide swaps market participants with certainty on how the uncleared margin rule will apply extraterritorially.

I believe that the advance notice of proposed rulemaking for the cross-border application of the uncleared margin rules demonstrates a pragmatism and flexibility that belies the oft repeated notion that CFTC rulemaking widely and woodenly overreaches in its assertion of extraterritorial jurisdiction. I commend it to our fellow regulators abroad as a portent of greater accord in global regulatory reform.

I look forward to reading and addressing well-considered comments on the cross-border issues. In particular, I join Commissioner Wetjen in welcoming thoughtful comment and analysis on the potential competitive impacts associated with each of the different approaches identified in the advance notice of proposed rulemaking. I encourage commentators to quantify, if practical, and be specific about particular provisions or concerns.

Furthermore, I think this rulemaking should be a template for things to come. I urge the Commission to follow the Securities and Exchange Commission's (SEC) lead and replace its non-binding guidance with a comprehensive set of rules, supported by a rigorous cost-benefit analysis, delineating when activities outside the United States will have a direct and significant connection with activities in, or effect on, commerce in the United States. Good regulation requires nothing less.

Notwithstanding my support for the issuance of these proposed rules and the advance notice of proposed rulemaking on cross-border issues in order to solicit comment, I have a number of substantive concerns which I will now address.

Ten-Day Margin Requirement

Today's proposal requires collateral coverage on uncleared swaps equal to a ten-day liquidation period. This ten-day calculation comports with rules adopted recently by the U.S. prudential bank regulators. Yet, it still must be asked: Is ten days the right calculation? Why not nine days; why not eleven? Should it be the same ten days for uncleared credit default swaps as it is for uncleared interest rate swaps and for all other swaps products? Surely, all non-cleared swap products do not have the same liquidity characteristics or risk profiles. I encourage commenters to provide their input on these questions.

SEC Chair Mary Jo White recently stated: ''Our regulatory changes must be informed by clear-eyed, unbiased, and fact-based assessments of the likely impacts—positive and negative—on market quality for investors and issuers.'' [2] Chair White's standard of assessment must surely apply to the proposed margin rule on uncleared swaps. Where is the clear-eyed assessment of the ten-day margin requirement? Where is the cost benefit analysis? What are the intended consequences? What will be the unintended ones? Will American swaps end users wind up paying for the added margin costs even though they are meant to be exempt? I would be interested to hear from commentators on this issue.

I am troubled by recent press reports of remarks by unnamed Fed officials that the coverage period may be intentionally ''punitive'' in order to move the majority of trades into a cleared environment.[3] I would

[1] *SIFMA* v. *CFTC,* No. 13–cv–1916 slip op. at 72 (D.D.C. Sept. 16, 2014).

[2] Phillip Stafford, *Sense of Urgency Underpins Fresh Scrutiny of Markets,* Financial Times, Sept. 16, 2014, available at *http://www.ft.com/intl/cms/s/0/a373646a-344b-11e4-b81c-00144feabdc0.html?siteedition=intl#axzz3DPM3AEzi.*

[3] Mike Kentz, *Derivatives: Fed backs off corporate margin requirements,* IFRAsia, Sept. 11, 2014, available at *http://www.ifrasia.com/derivatives-fed-backs-off-corporate-margin-requirements/21162697.fullarticle.*

be interested to review any considered analysis of the likely impact of the ten-day liquidation period and whether or not it may have a punitive effect on markets for uncleared swaps products.

Any punitive or arbitrary squeeze on non-cleared swaps will surely have consequences—likely unintended—for American businesses and their ability to manage risk. With tens of millions of Americans falling back on part-time work, it is not in our national interest to deter U.S. employers from safely hedging commercial risk to free capital for new ventures that create full-time jobs. It is time we move away from punishing U.S. capital markets toward rules designed to revive American prosperity. I look forward to reviewing well-considered comments as to the appropriateness of a ten-day liquidation period, as well as its estimated costs and benefits, particularly the impact on American economic growth.

End Users

As noted in the preamble, the Dodd-Frank Act requires the CFTC, the SEC, and the prudential regulators to establish comparable initial and variation margin requirements for uncleared swaps.[4] In 2011, however, the Commission and the prudential regulators issued proposals that varied significantly in several respects. In particular, the rules proposed by the prudential regulators in 2011 would have required non-financial end users to pay initial and variation margin to banks, while the Commission's rules exempted these entities in accordance with Congressional intent.[5]

I am pleased that the prudential regulators have moved in the CFTC's direction and will not require that non-financial end users pay margin unless necessary to address the credit risk posed by the counterparty and the risks of the swap.[6] It is widely recognized that non-financial end users, that generally use swaps to hedge their commercial risk, pose less risk as counterparties than financial entities. It is my hope that upon finalization of these rules, swap dealers and major swap participants will treat non-financial end users consistently when it comes to margin, no matter which set of rules apply.

Threshold for Swaps Exposure

I am also pleased that our collaboration with the BCBS/IOSCO[7] international working group has resulted in proposed rules that are largely harmonious with the 2013 international framework. There is a particular and significant difference that troubles me, however. The CFTC and the prudential regulators have set the threshold for material swaps exposure by financial end users at $3 billion, while the 2013 international framework sets the threshold at €8 billion (approximately $11 billion). This means that a whole middle-tier of American financial end users could be subject to margin requirements that will not be borne by similar firms overseas. It may well limit the number of counterparties willing to enter into swaps with these important lenders to American business. I am concerned that this could potentially reduce the utility of risk reducing strategies for a class of middle-tier, U.S. financial institutions that have already been hit hard by new capital constraints, among other rules.

In this time of dismal economic growth, it is hard to justify placing higher burdens on America's medium-sized financial firms than those their overseas competitors face. We have not, in my opinion, sufficiently addressed in our cost benefit analysis the impact of this threshold difference on American firms and their customers. Where is the clear-eyed analysis of the impact of this rule on the American economy? I hope that the Commission will not perpetuate this divergence in the final rules without carefully weighing the costs and benefits. I encourage commenters to address this point and to supply any data and analysis that may be illuminating. It is time our rules were designed less to punish and more to promote U.S. capital markets. Punishment as a singular regulatory policy is getting old and counterproductive. It is time our rules focused on returning America to work and prosperity.

Increase Reliance on International Collaboration

Similarly, I want to echo Commissioner Wetjen's call for comments on two areas where the Commission can harness international collaboration. First, I welcome comments on whether the Commission should exclude from the scope of this rulemaking any derivative cleared by a central counterparty (CCP) that is subject to regulation and supervision consistent with the CPSS–IOSCO Principles for Financial Market Infrastructures (PFMIs), an alternative on which the Commission seeks comment in the preamble. It is reported that at least one U.S. financial firm is a member at 70 different CCPs around the globe. The present proposal, if finalized, could result in trades cleared on many of these CCPs being treated as if they are uncleared.[8] This would seem to be a needlessly costly and burdensome imposition on American commerce. Global regulators have already agreed on international standards in the PFMIs to determine how CCPs should be regulated and supervised. It makes sense to leverage these standards where we can. I encourage comment on this issue.

I would also be interested in commenters' views on how the Commission should conduct its comparability analysis under this rulemaking. In the advance notice of proposed rulemaking, the Commission proposes to permit market participants to comply with foreign rules, if such rules are comparable to the Commission's margin requirements. Yet, a better approach may be to compare a foreign regime to the international standards put forward by the BCBS/IOSCO international working group that included participation from over 20 regulatory authorities. Doing so would give the Commission some comfort that foreign rules meet a necessary baseline, but could avoid unnecessary and potentially destabilizing disputes over comparability in the future. I hope the insights of interested parties will guide not only the Commission, but also the prudential regulators. I further hope all concerned parties can use this rulemaking as an opportunity to promote international comity at a time when it is sorely needed.

Treatment of Small Financial Entities

Another aspect of the proposed rules that concerns me is the treatment of financial entities that qualify for the small bank exemption from clearing and financial cooperatives. Section 2(h)(7)(C)(ii) of the CEA directed the Commission to consider whether to exempt from the definition of ''financial entity'' small banks, savings associations, farm credit system institutions and credit unions with total assets of $10 billion or less. In response, the Commission exempted these small financial institutions from the definition of financial entity for purposes of clearing. It recognized that these institutions serve a crucial function in the markets for hedging the commercial risk of non-financial end users. Moreover, the Commission acknowledged that the costs associated with clearing, including margin and other fees and expenses, may be prohibitive relative to the small number of swaps these firms execute over a given period of time.[9] In addition, using its Section 4(c) exemptive authority, the Commission permits cooperative financial entities, including those with total assets exceeding $10 billion, to elect an exemption from mandatory clearing for swaps executed in connection with originating loans for their members, or that hedge or mitigate commercial risk related to loans or swaps with their members.[10]

Despite the CFTC's otherwise appropriate treatment of these small banks and financial cooperatives, the proposed margin rules treat them as financial institutions required to post

[4] CEA section 4s(e)(3)(D)(ii).

[5] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 76 FR 23732, 23736–37 (Apr. 28, 2011).

[6] The prudential regulator's proposal contains the following provision: ''A covered swap entity is not required to collect initial margin with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is neither a financial end user with material swaps exposure nor a swap entity but shall collect initial margin at such times and in such forms (if any) that the covered swap entity determines appropriately address the credit risk posed by the counterparty and the risks of such non-cleared swaps and non-cleared security-based swaps.'' Margin and Capital Requirements for Covered Swap Entities, slip copy at 167, available at *http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20140903c1.pdf.* This is somewhat different, but not inconsistent with the Commission's proposal, which will allow the parties to exchange margin by agreement, or to arrange other types of collateral agreements consistent with their needs.

[7] Basel Committee on Banking Supervision/International Organization of Securities Commissions.

[8] Sam Fleming and Phillip Stafford, *JPMorgan Tells Clearers to Build Bigger Buffers,* Financial Times, Sept. 11, 2014 available at *http://www.ft.com/intl/cms/s/0/48aa6b02-38f9-11e4-9526-00144feabdc0.html#axzz3DPM3AEzi.*

[9] End-User Exception to the Clearing Requirement for Swaps, 77 FR 42560, 42578 (Jul. 19, 2012); 17 CFR 50.50(d).

[10] Clearing Exemption for Certain Swaps Entered into by Cooperatives, 78 FR 52286 (Aug. 22, 2013); 17 CFR 50.51.

margin when their swaps exposure exceeds the $3 billion threshold. This means that small banks and cooperative financial institutions entitled to a clearing exemption will have to pay margin for their uncleared activity with swap dealers or major swap participants when they have material swaps exposure. It makes no sense to provide these entities with an exemption from clearing on the one hand, only to turn around and require them to bear the potentially even greater costs associated with uncleared swaps. They deserve the full benefit of their clearing exemption, which they may not get if they have to post margin. I encourage comment on this issue, which I will weigh carefully in the process of considering a final rule.

Inter-Affiliate Exemption

The proposed rules may also diminish the utility of the critically important, inter-affiliate clearing exemption the Commission adopted last year for certain eligible affiliate counterparties.[11] The exemption was premised on recognition that transactions between affiliates do not present the same risks as market-facing swaps, and generally provide risk-mitigating, hedging, and netting benefits within a corporate group.[12] I welcome comments addressing the impact the proposed rules may have on the ability of affiliated entities to efficiently manage their risk.[13]

Use of Approved Models to Calculate Capital

Finally, I believe it is important to allow the use of models when calculating initial margin. The proposed rules require the Commission's prior written approval before a model can be used, even though the Commission lacks adequate staff and expertise for evaluating models. We recognize in the preamble that many covered swap entities are affiliates of entities whose margin models are reviewed by one of the prudential regulators, the SEC, or a foreign regulator, and to avoid duplicative efforts we plan to coordinate with other regulators in an effort to expedite our review. Rather than go through a special approval process, however, I believe we should accept models approved by our fellow regulators, so long as they contain the required elements. Alternatively, as mentioned in the preamble and discussed at the open meeting, this may be an area in which the National Futures Association can provide assistance, and I am interested in hearing its views on the issue. I also join Commissioner Wetjen's call for discussion on the circumstances in which the Commission may permit market participants to continue using models while Commission staff is reviewing them. Given the CFTC's limited resources, I believe we should make every effort to leverage the expertise of other qualified regulators before asking for more tax dollars from Americans working two jobs just to stay afloat.

Conclusion

In spite of my stated concerns, I support the issuance of these proposed rules in order to solicit comment. They raise a number of important issues, particularly in their impact on the U.S. economy and job creation and the extent of their application across the globe. It is vital that we hear from interested parties on how to get them right. I commend the Chairman and my fellow Commissioners for their thoughtfulness and open-mindedness in arriving at the final proposals. I look forward to receiving and reviewing comments on the issues discussed above and all aspects of the rules.

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[11] Clearing Exemption for Swaps Between Certain Affiliated Entities, 78 FR 21750 (Apr. 11, 2013); 17 CFR 50.52.

[12] *Id.* at 21751–54.

[13] Separately, I also welcome comments on the sufficiency of the no-action relief issued by the Division of Clearing and Risk for swaps entered into by treasury affiliates, and whether it may serve as a model for future rulemaking to provide greater certainty in this area. *See* CFTC Letter No. 13–22 (Jun. 4, 2013).

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Part III

Department of Defense

Office of the Secretary

Manual for Courts-Martial; Proposed Amendments; Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0140]

Manual for Courts-Martial; Proposed Amendments

AGENCY: Joint Service Committee on Military Justice (JSC), DoD.

ACTION: Notice of Proposed Amendments to the Manual for Courts-Martial, United States (2012 ed.) and Notice of Public Meeting.

SUMMARY: The Department of Defense is proposing changes to the *Manual for Courts-Martial, United States* (2012 ed.) (MCM). The proposed changes concern the rules of procedure and evidence and the punitive articles applicable in trials by courts-martial. These proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.01, ''Preparing, Processing and Coordinating Legislation, Executive Orders, Proclamations, Views Letters, and Testimony,'' June 15, 2007, and do not constitute the official position of the Department of Defense, the Military Departments, or any other Government agency.

This notice also sets forth the date, time and location for a public meeting of the JSC to discuss the proposed changes.

This notice is provided in accordance with DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 3, 2003.

This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

The JSC also invites members of the public to suggest changes to the Manual for Courts-Martial and address specific recommended changes with supporting rationale.

DATES: Comments on the proposed changes must be received no later than December 2, 2014. A public meeting for comments will be held on October 29, 2014, at 10:00 a.m. in the United States Court of Appeals for the Armed Forces, 450 E Street NW., Washington, DC 20442–0001.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Capt Allison A. DeVito, Executive Secretary, Joint Service Committee on Military Justice, 1500 West Perimeter Road, Suite 1130, Joint Base Andrews, Maryland 20762, 240–612–4820, email-*allison.a.devito.mil@mail.mil.*

SUPPLEMENTARY INFORMATION: The proposed amendments to the MCM are as follows:

Annex

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 201(f)(1) is amended to insert the following:

[**Note:** R.C.M. 201(f)(1) and (f)(2) apply to offenses committed on or after 24 June 2014. The previous version of R.C.M. 201(f)(1) and (f)(2) is located in Appendix 29.]

(b) R.C.M. 201(f)(1)(D) is inserted to read as follows:

''(D) *Jurisdiction for Certain Sexual Offenses.* Only a general court-martial has jurisdiction to try offenses under Articles 120(a), 120(b), 120b(a), and 120b(b), UCMJ, forcible sodomy under Article 125, UCMJ, and attempts thereof under Article 80, UCMJ.''

(c) R.C.M. 201(f)(2)(D) is inserted to read as follows:

''(D) *Certain Offenses under Articles 120, 120b, and 125.* Notwithstanding subsection (f)(2)(A), special courts-martial do not have jurisdiction over offenses under Articles 120(a), 120(b), 120b(a), and 120b(b), forcible sodomy under Article 125, UCMJ, and attempts thereof under Article 80, UCMJ. Such offenses shall not be referred to a special court-martial.''

(d) R.C.M. 305(i)(2)(A)(i) is amended to read as follows:

''(i) *Matters considered.* The review under this subsection shall include a review of the memorandum submitted by the prisoner's commander under subsection (h)(2)(C) of this rule. Additional written matters may be considered, including any submitted by the prisoner. The prisoner and the prisoner's counsel, if any, shall be allowed to appear before the 7-day reviewing officer and make a statement, if practicable. A representative of the command may also appear before the reviewing officer to make a statement.''

(e) R.C.M. 305(i)(2)(A)(iv) is inserted to read as follows:

''(iv) *Victim's right to be reasonably heard.* A victim of an alleged offense committed by the prisoner has the right to reasonable, accurate, and timely notice of the 7-day review; the right to consult with the representative of the command and counsel for the government, if any, present during the review; and the right to be reasonably heard during the review. The right to be heard under this rule includes the right to be heard through counsel. Inability to reasonably afford a victim these rights shall not delay the proceedings.''

(f) R.C.M. 305(i)(2)(C) is amended to read as follows:

''(C) *Action by 7-day reviewing officer.* Upon completion of review, the reviewing officer shall approve continued confinement or order immediate release. If the reviewing officer orders immediate release, a victim of an alleged offense committed by the prisoner has the right to reasonable, accurate, and timely notice of the release, unless such notice may endanger the safety of any person.''

(g) R.C.M. 305(n) is inserted to read as follows:

''(n) *Notice to victim of escaped prisoner.* A victim of an alleged offense committed by the prisoner for which the prisoner has been placed in pretrial confinement has the right to reasonable, accurate, and timely notice of the escape of the prisoner, unless such notice may endanger the safety of any person.''

(h) R.C.M. 404(e) is amended to read as follows:

''(e) Unless otherwise prescribed by the Secretary concerned, direct a preliminary hearing under R.C.M. 405, and, if appropriate, forward the report of preliminary hearing with the charges to a superior commander for disposition.''

(i) A new rule, R.C.M. 404A, is inserted to read as follows:

''Rule 404A. Disclosure of matters following direction of preliminary hearing

(a) When a convening authority directs a preliminary hearing under R.C.M. 405, counsel for

the government shall, subject to R.C.M. 404A(b)-(d) below, within 5 days of issuance of the Article 32 appointing order, provide to the defense the following information or matters:

(1) Charge sheet;

(2) Article 32 appointing order;

(3) Documents accompanying the charge sheet on which the preferral decision was based;

(4) Documents provided to the convening authority when deciding to direct the preliminary hearing;

(5) Documents the counsel for the government intends to present at the preliminary hearing; and

(6) Access to tangible objects counsel for the government intends to present at the preliminary hearing.

(b) *Contraband.* If items covered by subsection 404A(a) above are contraband, the disclosure required under this rule is a reasonable opportunity to inspect said contraband prior to the hearing.

(c) *Privilege.* If items covered by subsection 404A(a) above are privileged, classified or otherwise protected under Section V of Part III, no disclosure of those items is required under this rule. However, counsel for the government may disclose privileged, classified or otherwise protected information covered by subsection 404A(a) above if authorized by the holder of the privilege, or in the case of Mil. R. Evid. 505 or 506, if authorized by a competent authority.

(d) *Protective order if privileged information is disclosed.* If the government agrees to disclose to the accused information to which the protections afforded by Section V of Part III may apply, the convening authority, or other person designated by regulation of the Secretary concerned, may enter an appropriate protective order, in writing, to guard against the compromise of information disclosed to the accused. The terms of any such protective order may include prohibiting the disclosure of the information except as authorized by the authority issuing the protective order, as well as those terms specified by Mil. R. Evid. 505(g)(2)–(6) or 506(g)(2)(5).''

(j) R.C.M. 405 is amended in its entirety to read as follows:

''Rule 405. Preliminary hearing

[**Note:** This rule applies to offenses committed on or after 26 December 2014. The previous version of R.C.M. 405 is located in Appendix 30]

(a) *In general.* Except as provided in subsection (k) of this rule, no charge or specification may be referred to a general court-martial for trial until completion of a preliminary hearing in substantial compliance with this rule. A preliminary hearing conducted under this rule is not intended to serve as a means of discovery and will be limited to an examination of those issues necessary to determine whether there is probable cause to conclude that an offense or offenses have been committed and whether the accused committed it; to determine whether a court-martial would have jurisdiction over the offense(s) and the accused; to consider the form of the charge(s); and to recommend the disposition that should be made of the charge(s). Failure to comply with this rule shall have no effect on the disposition of the charge(s) if the charge(s) is not referred to a general court-martial.

(b) *Earlier preliminary hearing.* If a preliminary hearing of the subject matter of an offense has been conducted before the accused is charged with an offense, and the accused was present at the preliminary hearing and afforded the rights to counsel, cross-examination, and presentation of evidence required by this rule, no further preliminary hearing is required.

(c) *Who may direct a preliminary hearing.* Unless prohibited by regulations of the Secretary concerned, a preliminary hearing may be directed under this rule by any court-martial convening authority. That authority may also give procedural instructions not inconsistent with these rules.

(d) *Personnel.*

(1) *Preliminary hearing officer.* Whenever practicable, the convening authority directing a preliminary hearing under this rule shall detail an impartial judge advocate certified under Article 27(b), not the accuser, as a preliminary hearing officer, who shall conduct the preliminary hearing and make a report that addresses whether there is probable cause to believe that an offense or offenses have been committed and that the accused committed the offense(s); whether a court-martial would have jurisdiction over the offense(s) and the accused; the form of the charges(s); and a recommendation as to the disposition of the charge(s).

When the appointment of a judge advocate as the preliminary hearing officer is not practicable, or in exceptional circumstances in which the interest of justice warrants, the convening authority directing the preliminary hearing may detail an impartial commissioned officer, who is not the accuser, as the preliminary hearing officer. If the preliminary hearing officer is not a judge advocate, an impartial judge advocate certified under Article 27(b) shall be available to provide legal advice to the preliminary hearing officer.

When practicable, the preliminary hearing officer shall be equal or senior in grade to the military counsel detailed to represent the accused and the government at the preliminary hearing. The Secretary concerned may prescribe additional limitations on the appointment of preliminary hearing officers.

The preliminary hearing officer shall not depart from an impartial role and become an advocate for either side. The preliminary hearing officer is disqualified to act later in the same case in any other capacity.

(2) *Counsel to represent the United States.* A judge advocate, not the accuser, shall serve as counsel to represent the United States, and shall present evidence on behalf of the government relevant to the limited scope and purpose of the preliminary hearing as set forth in subsection (a) of this rule.

(3) *Defense counsel.*

(A) *Detailed counsel.* Except as provided in subsection (d)(3)(B) of this rule, military counsel certified in accordance with Article 27(b) shall be detailed to represent the accused.

(B) *Individual military counsel.* The accused may request to be represented by individual military counsel. Such requests shall be acted on in accordance with R.C.M. 506(b).

(C) *Civilian counsel.* The accused may be represented by civilian counsel at no expense to the United States. Upon request, the accused is entitled to a reasonable time to obtain civilian counsel and to have such counsel present for the preliminary hearing. However, the preliminary hearing shall not be unduly delayed for this purpose. Representation by civilian counsel shall not limit the rights to military counsel under subsections (d)(3)(A) and (B) of this rule.

(4) *Others.* The convening authority who directed the preliminary hearing may also, as a matter of discretion, detail or request an appropriate authority to detail:

(A) A reporter; and

(B) An interpreter.

(e) *Scope of preliminary hearing.*

(1) The preliminary hearing officer shall limit the inquiry to the examination of evidence, including witnesses, necessary to:

(A) Determine whether there is probable cause to believe an offense or offenses have been committed and whether the accused committed it;

(B) Determine whether a court-martial would have jurisdiction over the offense(s) and the accused;

(C) Consider whether the form of the charge(s) is proper; and

(D) Make a recommendation as to the disposition of the charge(s).

(2) If evidence adduced during the preliminary hearing indicates that the accused committed any uncharged

offense(s), the preliminary hearing officer may examine evidence and hear witnesses relating to the subject matter of such offense(s) and make the findings and recommendations enumerated in subsection (e)(1) of this rule regarding such offense(s) without the accused first having been charged with the offense. The accused's rights under subsection (f)(2) of this rule, and, where it would not cause undue delay to the proceedings, subsection (g) of this rule, are the same with regard to both charged and uncharged offenses. When considering uncharged offenses identified during the preliminary hearing, the preliminary hearing officer shall inform the accused of the general nature of each uncharged offense considered, and otherwise afford the accused the same opportunity for representation, cross examination, and presentation afforded during the preliminary hearing of any charged offense.

(f) *Rights of the accused.*

(1) Prior to any preliminary hearing under this rule the accused shall have the right to:

(A) Notice of any witnesses that the government intends to call at the preliminary hearing and copies of or access to any written or recorded statements made by those witnesses that relate to the subject matter of any charged offense;

(i) For purposes of this rule, a ''written statement'' is one that is signed or otherwise adopted or approved by the witness that is within the possession or control of counsel for the government; and

(ii) For purposes of this rule, a ''recorded statement'' is an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and contained in a digital or other recording or a transcription thereof that is within the possession or control of counsel for the government.

(B) Notice of, and reasonable access to, any other evidence that the government intends to offer at the preliminary hearing; and

(C) Notice of, and reasonable access to, evidence that is within the possession or control of counsel for the government that negates or reduces the degree of guilt of the accused for an offense charged.

(2) At any preliminary hearing under this rule the accused shall have the right to:

(A) Be represented by counsel;

(B) Be informed of the purpose of the preliminary hearing;

(C) Be informed of the right against self-incrimination under Article 31;

(D) Except in the circumstances described in R.C.M. 804(c)(2), be present throughout the taking of evidence;

(E) Cross-examine witnesses on matters relevant to the limited scope and purpose of the preliminary hearing;

(F) Present matters in defense and mitigation relevant to the limited scope and purpose of the preliminary hearing; and

(G) Make a statement relevant to the limited scope and purpose of the preliminary hearing.

(g) *Production of Witnesses and Other Evidence.*

(1) *Military Witnesses.*

(A) Prior to the preliminary hearing, defense counsel shall provide to counsel for the government the names of proposed military witnesses whom the accused requests that the government produce to testify at the preliminary hearing, and the requested form of the testimony, in accordance with the timeline established by the preliminary hearing officer. Counsel for the government shall respond that either (1) the government agrees that the witness testimony is relevant, not cumulative, and necessary for the limited scope and purpose of the preliminary hearing and will seek to secure the witness's testimony for the hearing; or (2) the government objects to the proposed defense witness on the grounds that the testimony would be irrelevant, cumulative, or unnecessary based on the limited scope and purpose of the preliminary hearing.

(B) If the government objects to the proposed defense witness, defense counsel may request that the preliminary hearing officer determine whether the witness is relevant, not cumulative, and necessary based on the limited scope and purpose of the preliminary hearing.

(C) If the government does not object to the proposed defense military witness or the preliminary hearing officer determines that the military witness is relevant, not cumulative, and necessary, counsel for the government shall request that the commanding officer of the proposed military witness make that person available to provide testimony. The commanding officer shall determine whether the individual is available based on operational necessity or mission requirements, except that a victim, as defined in this rule, who declines to testify shall be deemed to be not available. If the commanding officer determines that the military witness is available, counsel for the government shall make arrangements for that individual's testimony. The commanding officer's determination of unavailability due to operational necessity or mission requirements is final. The military witness's commanding officer determines the availability of the witness and, if there is a dispute among the parties, determines whether the witness testifies in person, by videoteleconference, by telephone, or similar means of remote testimony.

(2) *Civilian Witnesses.*

(A) Defense counsel shall provide to counsel for the government the names of proposed civilian witnesses whom the accused requests that the government produce to testify at the preliminary hearing, and the requested form of the testimony, in accordance with the timeline established by the preliminary hearing officer. Counsel for the government shall respond that either (1) the government agrees that the witness testimony is relevant, not cumulative, and necessary for the limited scope and purpose of the preliminary hearing and will seek to secure the witness's testimony for the hearing; or (2) the government objects to the proposed defense witness on the grounds that the testimony would be irrelevant, cumulative, or unnecessary based on the limited scope and purpose of the preliminary hearing.

(B) If the government objects to the proposed defense witness, defense counsel may request that the preliminary hearing officer determine whether the witness is relevant, not cumulative, and necessary based on the limited scope and purpose of the preliminary hearing.

(C) If the government does not object to the proposed civilian witness or the preliminary hearing officer determines that the civilian witness testimony is relevant, not cumulative, and necessary, counsel for the government shall invite the civilian witness to provide testimony and, if the individual agrees, shall make arrangements for that witness's testimony. If expense to the government is to be incurred, the convening authority who directed the preliminary hearing, or the convening authority's delegate, shall determine whether the witness testifies in person, by videoteleconference, by telephone, or similar means of remote testimony.

(3) *Other evidence.*

(A) *Evidence under the control of the government.*

(i) Prior to the preliminary hearing, defense counsel shall provide to counsel for the government a list of evidence under the control of the government the accused requests the government produce to the defense for introduction at the preliminary hearing. The preliminary hearing officer may set a deadline by which defense requests

must be received. Counsel for the government shall respond that either (1) the government agrees that the evidence is relevant, not cumulative, and necessary for the limited scope and purpose of the preliminary hearing and shall make reasonable efforts to obtain the evidence; or (2) the government objects to production of the evidence on the grounds that the evidence would be irrelevant, cumulative, or unnecessary based on the limited scope and purpose of the preliminary hearing.

(ii) If the government objects to production of the evidence, defense counsel may request that the preliminary hearing officer determine whether the evidence should be produced. The preliminary hearing officer shall determine whether the evidence is relevant, not cumulative, and necessary based on the limited scope and purpose of the hearing. If the preliminary hearing officer determines that the evidence shall be produced, counsel for the government shall make reasonable efforts to obtain the evidence.

(B) *Evidence not under the control of the government.*

(i) Evidence not under the control of the government may be obtained through noncompulsory means or by *subpoenas duces tecum* issued by counsel for the government in accordance with the process established by R.C.M. 703.

(ii) Prior to the preliminary hearing, defense counsel shall provide to counsel for the government a list of evidence not under the control of the government that the accused requests the government obtain. The preliminary hearing officer may set a deadline by which defense requests must be received. Counsel for the government shall respond that either (1) the government agrees that the evidence is relevant, not cumulative, and necessary for the limited scope and purpose of the preliminary hearing and shall issue *subpoenas duces tecum* for the evidence; or (2) the government objects to production of the evidence on the grounds that the evidence would be irrelevant, cumulative, or unnecessary based on the limited scope and purpose of the preliminary hearing.

(iii) If the government objects to production of the evidence, defense counsel may request that the preliminary hearing officer determine whether the evidence should be produced. If the preliminary hearing officer determines that the evidence is relevant, not cumulative, and necessary based on the limited scope and purpose of the preliminary hearing and that the issuance of *subpoenas duces tecum* would not cause undue delay to the preliminary hearing, the preliminary hearing officer shall direct counsel for the government to issue *subpoenas duces tecum* for the defense-requested evidence. Failure on the part of counsel for the government to issue *subpoenas duces tecum* directed by the preliminary hearing officer shall be noted by the preliminary hearing officer in the report of preliminary hearing.

(h) *Military Rules of Evidence.* The Military Rules of Evidence do not apply in preliminary hearings under this rule except as follows:

(1) Mil. R. Evid. 301–303 and 305 shall apply in their entirety.

(2) Mil. R. Evid. 412 shall apply in any case that includes a charge defined as a sexual offense in Mil. R. Evid. 412(d), except that Mil. R. Evid. 412(b)(1)(C) shall not apply.

(3) Mil. R. Evid., Section V, Privileges, shall apply, except that Mil. R. Evid. 505(f)–(h) and (j); 506(f)–(h), (j), (k), and (m); 513(d)(8); and 514(d)(6) shall not apply.

(4) In applying these rules to a preliminary hearing, the term ''military judge,'' as used in these rules shall mean the preliminary hearing officer, who shall assume the military judge's authority to exclude evidence from the preliminary hearing, and who shall, in discharging this duty, follow the procedures set forth in the rules cited in subsections (h)(1)–(3) of this rule.

(5) Failure to meet the procedural requirements of the applicable rules of evidence shall result in exclusion of that evidence from the preliminary hearing, unless good cause is shown.

(i) *Procedure.*

(1) *Generally.* The preliminary hearing shall begin with the preliminary hearing officer informing the accused of the accused's rights under subsection (f) of this rule. Counsel for the government will then present evidence. Upon the conclusion of counsel for the government's presentation of evidence, defense counsel may present matters in defense and mitigation consistent with subsection (f) of this rule. For the purposes of this rule, ''matters in mitigation'' are defined as matters that may serve to explain the circumstances surrounding a charged offense. Both counsel for the government and defense shall be afforded an opportunity to cross-examine adverse witnesses. The preliminary hearing officer may also question witnesses called by the parties. If the preliminary hearing officer determines that additional evidence is necessary to satisfy the requirements of subsection (e) above, the preliminary hearing officer may provide the parties an opportunity to present additional testimony or evidence relevant to the limited scope and purpose of the preliminary hearing. The preliminary hearing officer shall not consider evidence not presented at the preliminary hearing. The preliminary hearing officer shall not call witnesses *sua sponte.*

(2) *Notice to and presence of the victim(s).*

(A) The victim(s) of an offense under the UCMJ has the right to reasonable, accurate, and timely notice of a preliminary hearing relating to the alleged offense. For the purposes of this rule, a ''victim'' is a person who is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration.

(B) A victim of an offense under consideration at the preliminary hearing is not required to testify at the preliminary hearing.

(C) A victim has the right not to be excluded from any portion of a preliminary hearing related to the alleged offense, unless the preliminary hearing officer, after receiving clear and convincing evidence, determines the testimony by the victim would be materially altered if the victim heard other testimony at the proceeding.

(D) A victim shall be excluded if a privilege set forth in Mil. R. Evid. 505 or 506 is invoked or if evidence is offered under Mil. R. Evid. 412, 513, or 514, for charges other than those in which the victim is named.

(3) *Presentation of evidence.*

(A) *Testimony.* Witness testimony may be provided in person, by videoteleconference, by telephone, or similar means of remote testimony. All testimony shall be taken under oath, except that the accused may make an unsworn statement. The preliminary hearing officer shall only consider testimony that is relevant to the limited scope and purpose of the preliminary hearing.

(B) *Other evidence.* If relevant to the limited scope and purpose of the preliminary hearing, and not cumulative, a preliminary hearing officer may consider other evidence, in addition to or in lieu of witness testimony, including statements, tangible evidence, or reproductions thereof, offered by either side, that the preliminary hearing officer determines is reliable. This other evidence need not be sworn.

(4) *Access by spectators.* Access by spectators to all or part of the proceedings may be restricted or foreclosed in the discretion of the convening authority who directed the

preliminary hearing or the preliminary hearing officer. Preliminary hearings are public proceedings and should remain open to the public whenever possible. When an overriding interest exists that outweighs the value of an open preliminary hearing, the preliminary hearing may be closed to spectators. Any closure must be narrowly tailored to achieve the overriding interest that justified the closure. Convening authorities or preliminary hearing officers must conclude that no lesser methods short of closing the preliminary hearing can be used to protect the overriding interest in the case. Convening authorities or preliminary hearing officers must conduct a case-by-case, witness-by-witness, circumstance-by-circumstance analysis of whether closure is necessary. If a convening authority or preliminary hearing officer believes closing the preliminary hearing is necessary, the convening authority or preliminary hearing officer must make specific findings of fact in writing that support the closure. The written findings of fact must be included in the report of preliminary hearing. Examples of overriding interests may include: preventing psychological harm or trauma to a child witness or an alleged victim of a sexual crime, protecting the safety or privacy of a witness or alleged victim, protecting classified material, and receiving evidence where a witness is incapable of testifying in an open setting.

(5) *Presence of accused.* The further progress of the taking of evidence shall not be prevented and the accused shall be considered to have waived the right to be present whenever the accused:

(A) After being notified of the time and place of the proceeding is voluntarily absent; or

(B) After being warned by the preliminary hearing officer that disruptive conduct will cause removal from the proceeding, persists in conduct which is such as to justify exclusion from the proceeding.

(6) *Recording of the preliminary hearing.* Counsel for the government shall ensure that the preliminary hearing is recorded by a suitable recording device. A victim, as defined by subsection (i)(2)(A) of this rule, may request access to, or a copy of, the recording of the proceedings. Upon request, counsel for the government shall provide the requested access to, or a copy of, the recording to the victim not later than a reasonable time following dismissal of the charges, unless charges are dismissed for the purpose of re-referral, or court-martial adjournment. A victim is not entitled to classified information or closed sessions in which the victim did not have the right to attend under subsections (i)(2)(C) or (i)(2)(D) of this rule.

(7) *Objections.* Any objection alleging failure to comply with this rule shall be made to the convening authority via the preliminary hearing officer.

(8) *Sealed exhibits and proceedings.* The preliminary hearing officer has the authority to order exhibits, proceedings, or other matters sealed as described in R.C.M. 1103A.

(j) *Report of preliminary hearing.*

(1) *In general.* The preliminary hearing officer shall make a timely written report of the preliminary hearing to the convening authority who directed the preliminary hearing.

(2) *Contents.* The report of preliminary hearing shall include:

(A) A statement of names and organizations or addresses of defense counsel and whether defense counsel was present throughout the taking of evidence, or if not present the reason why;

(B) The substance of the testimony taken on both sides;

(C) Any other statements, documents, or matters considered by the preliminary hearing officer, or recitals of the substance or nature of such evidence;

(D) A statement that an essential witness may not be available for trial;

(E) An explanation of any delays in the preliminary hearing;

(F) A notation if counsel for the government failed to issue a *subpoena duces tecum* that was directed by the preliminary hearing officer;

(G) The preliminary hearing officer's determination as to whether there is probable cause to believe the offense(s) listed on the charge sheet or otherwise considered at the preliminary hearing occurred;

(H) The preliminary hearing officer's determination as to whether there is probable cause to believe the accused committed the offense(s) listed on the charge sheet or otherwise considered at the preliminary hearing;

(I) The preliminary hearing officer's determination as to whether a court-martial has jurisdiction over the offense(s) and the accused;

(J) The preliminary hearing officer's determination as to whether the charge(s) and specification(s) are in proper form; and

(K) The recommendations of the preliminary hearing officer regarding disposition of the charge(s).

(3) *Sealed exhibits and proceedings.* If the report of preliminary hearing contains exhibits, proceedings, or other matters ordered sealed by the preliminary hearing officer in accordance with R.C.M. 1103A, counsel for the government shall cause such materials to be sealed so as to prevent unauthorized viewing or disclosure.

(4) *Distribution of the report.* The preliminary hearing officer shall cause the report to be delivered to the convening authority who directed the preliminary hearing. That convening authority shall promptly cause a copy of the report to be delivered to each accused.

(5) *Objections.* Any objection to the report shall be made to the convening authority who directed the preliminary hearing, via the preliminary hearing officer, within 5 days of its receipt by the accused. This subsection does not prohibit a convening authority from referring the charge(s) or taking other action within the 5-day period.

(k) *Waiver.* The accused may waive a preliminary hearing under this rule. In addition, failure to make a timely objection under this rule, including an objection to the report, shall constitute waiver of the objection. Relief from the waiver may be granted by the convening authority who directed the preliminary hearing, a superior convening authority, or the military judge, as appropriate, for good cause shown.''

(k) R.C.M. 601(g) is inserted to read as follows:

''(g) *Parallel convening authorities.* If it is impracticable for the original convening authority to continue exercising authority over the charges, the convening authority may cause the charges, even if referred, to be transmitted to a parallel convening authority. This transmittal must be in writing and in accordance with such regulations as the Secretary concerned may prescribe. Subsequent actions taken by the parallel convening authority are within the sole discretion of that convening authority.''

(l) R.C.M. 703(e)(2)(B) is amended to read as follows:

''(B) *Contents.* A subpoena shall state the command by which the proceeding is directed, and the title, if any, of the proceeding. A subpoena shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. A subpoena may also command the person to whom it is directed to produce books, papers, documents, data, or other objects or electronically stored information designated therein at the proceeding or at an earlier time for inspection by the parties. A subpoena issued for a preliminary hearing pursuant to Article 32 shall not command any person to attend or give testimony at an Article 32 preliminary hearing.''

(m) R.C.M. 703(e)(2)(C) is amended to read as follows:

''(C) *Who may issue.*

(1) A subpoena to secure evidence may be issued by:

(a) The summary court-martial;

(b) Detailed counsel for the government at an Article 32 preliminary hearing;

(c) After referral to a court-martial, detailed trial counsel;

(d) The president of a court of inquiry; or

(e) An officer detailed to take a deposition.''

(n) R.C.M. 703(f)(4)(B) is amended to read as follows:

(B) *Evidence not under the control of the government.* Evidence not under the control of the government may be obtained by a subpoena issued in accordance with subsection (e)(2) of this rule. A *subpoena duces tecum* to produce books, papers, documents, data, or other objects or electronically stored information for a preliminary hearing pursuant to Article 32 may be issued, following the convening authority's order directing such preliminary hearing, by counsel for the government. A person in receipt of a *subpoena duces tecum* for an Article 32 hearing need not personally appear in order to comply with the subpoena.''

(o) R.C.M. 801(a)(g) is inserted to read as follows:

''(6) In the case of a victim of an offense under the UCMJ who is under 18 years of age and not a member of the armed forces, or who is incompetent, incapacitated, or deceased, designate in writing, a family member, a representative of the estate of the victim, or another suitable individual to assume the victim's rights under the UCMJ.

(A) For the purposes of this rule, the individual is designated for the sole purpose of assuming the legal rights of the victim as they pertain to the victim's status as a victim of any offense(s) properly before the court.

(B) *Procedure to determine appointment of designee.*

(i) As soon as practicable, trial counsel shall notify the military judge, counsel for the accused and the victim(s) of any offense(s) properly before the court when there is an apparent requirement to appoint a designee under this rule.

(ii) The military judge will determine if the appointment of a designee is required under this rule.

(iii) At the discretion of the military judge, victim(s), trial counsel, and the accused may be given the opportunity to recommend to the military judge individual(s) for appointment.

(iv) The military judge is not required to hold a hearing before determining whether a designation is required or making such an appointment under this rule.

(v) If the military judge determines a hearing pursuant to Article 39(a), UCMJ, is necessary, the following shall be notified of the hearing and afforded the right to be present at the hearing: trial counsel, accused, and the victim(s).

(vi) The individual designated shall not be the accused.

(C) At any time after appointment, a designee shall be excused upon request by the designee or a finding of good cause by the military judge.

(D) If the individual appointed to assume the victim's rights is excused, the military judge shall appoint a successor consistent with this rule.''

(p) R.C.M. 806(b)(2) is insert following R.C.M. 806(b)(1) and before the Discussion section to read as follows:

''(2) *Right of victim to attend.* A victim of an alleged offense committed by the accused may not be excluded from a court-martial relating to the offense, unless the military judge, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that hearing or proceeding.''

(q) R.C.M. 806(b)(2) is renumbered as R.C.M. 806(b)(3).

(r) R.C.M. 906(b)(8) is amended to read as follows:

''(8) *Relief from pretrial confinement.* Upon a motion for release from pretrial confinement, a victim of an alleged offense committed by the accused has the right to reasonable, accurate, and timely notice of the motion and any hearing, the right to consult with trial counsel, and the right to be reasonably heard. Inability to reasonably afford a victim these rights shall not delay the proceedings. The right to be heard under this rule includes the right to be heard through counsel.''

(s) R.C.M. 912(i)(3) is amended to read as follows:

''(3) *Preliminary hearing officer.* For purposes of this rule, ''preliminary hearing officer'' includes any person who has examined charges under R.C.M. 405 and any person who was counsel for a member of a court of inquiry, or otherwise personally has conducted an investigation of the general matter involving the offenses charged.''

(t) R.C.M. 1001(a)(1)(B) is amended to read as follows:

''(B) Victim's right to be reasonably heard. *See* R.C.M. 1001A.''

(u) R.C.M. 1001(a)(C)–(G) are re-lettered to read as follows:

''(C) Presentation by the defense of evidence in extenuation or mitigation or both.

(D) Rebuttal.

(E) Argument by trial counsel on sentence.

(F) Argument by defense counsel on sentence.

(G) Rebuttal arguments in the discretion of the military judge.''

(v) A new rule, R.C.M.1001A is inserted to read as follows:

''A victim of an offense of which the accused has been found guilty has the right to be reasonably heard at a sentencing hearing relating to that offense. For the purposes of this rule, the right to be reasonably heard means the right to testify under oath. Trial counsel shall ensure the victim has the opportunity to exercise that right. As used in this rule a ''victim'' is a person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense. If the victim exercises the right to be reasonably heard, the victim shall be called by the court.''

(w) R.C.M. 1103A(a) is amended to read as follows:

''(a) *In general.* If the report of preliminary hearing or record of trial contains exhibits, proceedings, or other matter ordered sealed by the military judge, counsel for the government or trial counsel shall cause such materials to be sealed so as to prevent unauthorized viewing or disclosure. Counsel for the government or trial counsel shall ensure that such materials are properly marked, including an annotation that the material was sealed by order of the military judge, and inserted at the appropriate place in the original record of trial. Copies of the report of preliminary hearing or record of trial shall contain appropriate annotations that matters were sealed by order of the preliminary hearing officer or military judge and have been inserted in the report of preliminary hearing or original record of trial.''

(x) R.C.M. 1103A(b)(1) is amended to read as follows:

''(1) *Prior to referral.* The following individuals may examine sealed materials only if necessary for proper fulfillment of their responsibilities under the UCMJ, the MCM, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional responsibility: the judge advocate advising the convening authority who directed the Article 32 preliminary hearing; the convening authority who directed the Article 32 preliminary hearing; the staff judge advocate to the general court-martial convening

authority; and the general court-martial convening authority.''

(y) R.C.M. 1103A(b)(5) is inserted to read as follows:

''(5) *Examination of sealed matters.* For the purpose of this rule, ''examination'' includes reading, viewing, photocopying, photographing, disclosing, or manipulating the sealed matters in any way.''

(z) R.C.M. 1105 is amended to read as follows:

[**Note:** R.C.M. 1105(b)(1) and (b)(2) apply to offenses committed on or after 24 June 2014. The previous version of R.C.M. 1105(b)(1) and (b)(2) is located in Appendix 29.]

(aa) R.C.M. 1105(b)(1) is amended to read as follows:

''(1) The accused may submit to the convening authority any matters that may reasonably tend to affect the convening authority's decision whether to disapprove any findings of guilty or to approve the sentence, except as may be limited by R.C.M. 1107(b)(3)(C). The convening authority is only required to consider written submissions.''

(bb) R.C.M. 1105(b)(2)(C) is amended to read as follows:

''(C) Matters in mitigation which were not available for consideration at the court-martial, except as may be limited by R.C.M. 1107(b)(3)(B); and''

(cc) R.C.M. 1107 is amended to read as follows:

[**Note:** R.C.M. 1107(b)–(d) and (f) apply to offenses committed on or after 24 June 2014. The previous version of R.C.M. 1107(b) is located in Appendix 29.]

(dd) R.C.M. 1107(b)(1) is amended to read as follows:

''(1) *Discretion of convening authority.* Any action to be taken on the findings and sentence is within the sole discretion of the convening authority. The convening authority is not required to review the case for legal errors or factual sufficiency.''

(ee) R.C.M. 1107(b)(3)(A)(iii) is amended to read as follows:

''(iii) Any matters submitted by the accused under R.C.M. 1105 or, if applicable, R.C.M. 1106(f);

(ff) R.C.M. 1107(b)(3)(A)(iv) is inserted to read as follows:

''(iv) Any statement submitted by a crime victim pursuant to R.C.M. 1105A and subsection (C) below.''

(gg) R.C.M. 1107(b)(3)(B)(i) is amended to read as follows:

''(i) The record of trial, subject to the provisions of R.C.M. 1103A and subsection (C) below;''

(hh) R.C.M. 1107(c) is amended to read as follows:

''(c) *Action on findings.* Action on the findings is not required. However, the convening authority may take action subject to the following limitations:

(1) For offenses charged under subsection (a) or (b) of Article 120; offenses charged under Article 120b; and offenses charged under Article 125.

(A) The convening authority is prohibited from:

(i) Setting aside any finding of guilt or dismissing a specification; or

(ii) Changing a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.

(B) The convening authority may direct a rehearing in accordance with subsection (e) of this rule.

(2) For offenses other than those listed in subsection (c)(1), for which the maximum sentence of confinement that may be adjudged does not exceed two years without regard to the jurisdictional limits of the court; and the sentence adjudged does not include dismissal, a dishonorable discharge, bad-conduct discharge, or confinement for more than six months:

(A) The convening authority may change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification; or

(B) Set aside any finding of guilty and:

(i) Dismiss the specification and, if appropriate, the charge; or

(ii) Direct a rehearing in accordance with subsection (e) of this rule.

(3) If the convening authority acts to dismiss or change any charge or specification for an offense, the convening authority shall provide, at the same time, a written explanation of the reasons for such action. The written explanation shall be made a part of the record of trial and action thereon.''

(ii) R.C.M. 1107(d)(1) is amended to read as follows:

''(1) *In general.*

(A) The convening authority may not disapprove, commute, or suspend, in whole or in part, any portion of an adjudged sentence of confinement for more than six months.

(B) The convening authority may not disapprove, commute, or suspend that portion of an adjudged sentence that includes a dismissal, dishonorable discharge, or bad-conduct discharge.

(C) The convening authority may disapprove, commute, or suspend, in whole or in part, any portion of an adjudged sentence not explicitly prohibited by this rule, to include reduction in pay grade, forfeitures of pay and allowances, fines, reprimands, restrictions, and hard labor without confinement.

(D) The convening authority shall not disapprove, commute, or suspend any mandatory minimum sentence except in accordance with subsection (E) below.

(E) *Exceptions.*

(i) *Trial counsel recommendation.* Upon the recommendation of the trial counsel, in recognition of the substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, the convening authority or another person authorized to act under this section shall have the authority to disapprove, commute, or suspend the adjudged sentence, in whole or in part, even with respect to an offense for which a mandatory minimum sentence exists.

(ii) *Pretrial agreement.* If a pretrial agreement has been entered into by the convening authority and the accused as authorized by R.C.M. 705, the convening authority shall have the authority to approve, disapprove, commute, or suspend a sentence, in whole or in part, pursuant to the terms of the pretrial agreement. The convening authority may commute a mandatory sentence of a dishonorable discharge to a bad-conduct discharge pursuant to the terms of the pretrial agreement.

(F) If the convening authority acts to disapprove, commute, or suspend, in whole or in part, the sentence of the court-martial for an offense, the convening authority shall provide, at the same time, a written explanation of the reasons for such action. The written explanation shall be made a part of the record of trial and action thereon.''

(jj) R.C.M. 1107(d)(2) is amended to read as follows:

''(2) *Determining what sentence should be approved.* The convening authority shall, subject to the limitations in subsection (d)(1) above, approve that sentence which is warranted by the circumstances of the offense and appropriate for the accused.''

(kk) R.C.M. 1107(f)(2) is amended to read as follows:

''(2) *Modification of initial action.* Subject to the limitations in subsections (c) and (d) above, the convening authority may recall and modify any action taken by that convening authority at any time before it has been published or before the accused has been officially notified. The convening authority may also recall and modify any action at any time prior to forwarding the record for review, as long as the modification does not result in action less favorable to the accused than the earlier action. In addition, in any special court-martial, the convening authority may recall and correct an illegal, erroneous, incomplete, or ambiguous action at any

time before completion of review under R.C.M. 1112, as long as the correction does not result in action less favorable to the accused than the earlier action. When so directed by a higher reviewing authority or the Judge Advocate General, the convening authority shall modify any incomplete, ambiguous, void, or inaccurate action noted in review of the record of trial under Articles 64, 66, 67, or examination of the record of trial under Article 69. The convening authority shall personally sign any supplementary or corrective action. A written explanation is required for any modification of initial action which: 1) sets aside any finding of guilt or dismisses or changes any charge or specification for an offense; or 2) disapproves, commutes, or suspends, in whole or in part, the sentence. The written explanation shall be made a part of the record of trial and action thereon.''

(ll) R.C.M. 1107(g) is amended to read as follows:

''(g) *Incomplete, ambiguous, or erroneous action.* When the action of the convening authority or of a higher authority is incomplete, ambiguous, or contains error, the authority who took the incomplete, ambiguous, or erroneous action may be instructed by an authority acting under Articles 64, 66, 67, or 69 to withdraw the original action and substitute a corrected action.''

(mm) R.C.M. 1108 is amended to read as follows:

[**Note:** R.C.M. 1108(b) applies to offenses committed on or after 24 June 2014. The previous version of R.C.M. 1108(b) is located in Appendix 29.]

(nn) R.C.M. 1108(b) is amended to read as follows:

''(b) *Who may suspend and remit.* The convening authority may, after approving the sentence, suspend the execution of all or any part of the sentence of a court-martial, except for a sentence of death or as prohibited under R.C.M. 1107. The general court-martial convening authority over the accused at the time of the court-martial may, when taking action under R.C.M. 1112(f), suspend or remit any part of the sentence. The Secretary concerned and, when designated by the Secretary concerned, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may suspend or remit any part or amount of the unexecuted part of any sentence other than a sentence approved by the President or a sentence of confinement for life without eligibility for parole that has been ordered executed. The Secretary concerned may, however, suspend or remit the unexecuted part of a sentence of confinement for life without eligibility for parole only after the service of a period of confinement of not less than 20 years. The commander of the accused who has the authority to convene a court-martial of the kind that adjudged the sentence may suspend or remit any part of the unexecuted part of any sentence by summary court-martial or of any sentence by special court-martial that does not include a bad-conduct discharge regardless of whether the person acting has previously approved the sentence. The ''unexecuted part of any sentence'' is that part that has been approved and ordered executed but that has not actually been carried out.''

(oo) R.C.M. 1301(c) is amended to read as follows:

[**Note:** R.C.M. 1301(c) applies to offenses committed on or after 24 June 2014. The previous version of R.C.M. 1301(c) is located in Appendix 29.]

(pp) R.C.M. 1301(c) is amended to number the current paragraph as (1) and insert a new second paragraph after the current Discussion as follows:

''(2) Notwithstanding subsection (c)(1) above, summary courts-martial do not have jurisdiction over offenses under Articles 120(a), 120(b), 120b(a), 120b(b), forcible sodomy under Article 125, and attempts thereof under Article 80, UCMJ. Such offenses shall not be referred to a summary court-martial.''

(qq) R.C.M. 406(b)(2) and R.C.M. 1103 are amended by changing ''report of investigation'' to ''report of preliminary hearing'' for offenses committed on or after 26 December 2014.

(rr) R.C.M. 603(b) and R.C.M. 912(f)(1)(F) are amended by changing ''an investigating officer'' to ''a preliminary hearing officer'' for offenses committed on or after 26 December 2014.

(ss) R.C.M. 705(c)(2)(E), R.C.M. 905(b)(1), and R.C.M. 906(b)(3) are amended by changing ''Article 32 investigation'' to ''Article 32 preliminary hearing'' for offenses committed on or after 26 December 2014.

(tt) R.C.M. 706(a), R.C.M. 706(c)(3)(A), R.C.M. 902(b)(2), R.C.M. 912(a)(1)(K), R.C.M. 1106(b), and R.C.M. 1112(c) are amended by changing ''investigating officer'' to ''preliminary hearing officer'' for offenses committed on or after 26 December 2014.

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

(a) Mil. R. Evid. 412(c)(2) is amended to read as follows:

''(2) Before admitting evidence under this rule, the military judge must conduct a hearing, which shall be closed. At this hearing, the parties may call witnesses, including the alleged victim, and offer relevant evidence. The alleged victim must be afforded a reasonable opportunity to attend and be heard. The right to be heard under this rule includes the right to be heard through counsel. In a case before a court-martial comprised of a military judge and members, the military judge shall conduct the hearing outside the presence of the members pursuant to Article 39(a). The motion, related papers, and the record of the hearing must be sealed in accordance with R.C.M. 1103A and remain under seal unless the military judge or an appellate court orders otherwise.''

(b) Mil. R. Evid. 513(e)(2) is amended to read as follows:

''(2) Before ordering the production or admission of evidence of a patient's records or communication, the military judge shall conduct a hearing. Upon the motion of counsel for either party and upon good cause shown, the military judge may order the hearing closed. At the hearing, the parties may call witnesses, including the patient, and offer other relevant evidence. The patient shall be afforded a reasonable opportunity to attend the hearing and be heard at the patient's own expense unless the patient has been otherwise subpoenaed or ordered to appear at the hearing. The right to be heard under this rule includes the right to be heard through counsel. However, the proceedings shall not be unduly delayed for this purpose. In a case before a court-martial comprised of a military judge and members, the military judge shall conduct the hearing outside the presence of the members.''

(c) The title of Mil. R. Evid. 514 is amended to read as follows:

''Victim advocate-victim and DoD Safe Helpline staff-victim privilege.''

(d) Mil. R. Evid. 514(a) is amended to read as follows:

''(a) *General Rule.* A victim has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the alleged victim and a victim advocate or between the alleged victim and DoD Safe Helpline staff, in a case arising under the Uniform Code of Military Justice, if such communication was made for the purpose of facilitating advice or assistance to the alleged victim.''

(e) Mil. R. Evid. 514(b)(3)–(5) is amended to read as follows

''(3) ''DoD Safe Helpline staff'' is a person who is designated by competent

authority in writing as DoD Safe Helpline staff.

(4) A communication is ''confidential'' if made in the course of the victim advocate-victim relationship or DoD Safe Helpline staff-victim relationship and not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of advice or assistance to the alleged victim or those reasonably necessary for such transmission of the communication.

(5) ''Evidence of a victim's records or communications'' means testimony of a victim advocate or DoD Safe Helpline staff, or records that pertain to communications by a victim to a victim advocate or DoD Safe Helpline staff, for the purposes of advising or providing assistance to the victim.''

(g) Mil. R. Evid. 514(c) is amended to read as follows:

''(c) *Who May Claim the Privilege.* The privilege may be claimed by the victim or the guardian or conservator of the victim. A person who may claim the privilege may authorize trial counsel or a counsel representing the victim to claim the privilege on his or her behalf. The victim advocate or DoD Safe Helpline staff who received the communication may claim the privilege on behalf of the victim. The authority of such a victim advocate, DoD Safe Helpline staff, guardian, conservator, or a counsel representing the victim to so assert the privilege is presumed in the absence of evidence to the contrary.''

(h) Mil. R. Evid. 514(d)(2)–(4) is amended to read as follows:

''(2) When federal law, state law, Department of Defense regulation, or service regulation imposes a duty to report information contained in a communication;

(3) When a victim advocate or DoD Safe Helpline staff believes that a victim's mental or emotional condition makes the victim a danger to any person, including the victim;

(4) If the communication clearly contemplated the future commission of a fraud or crime, or if the services of the victim advocate or DoD Safe Helpline staff are sought or obtained to enable or aid anyone to commit or plan to commit what the victim knew or reasonably should have known to be a crime or fraud;''

(j) Mil. R. Evid. 514(e)(2) is amended to read as follows:

''(2) Before ordering the production or admission of evidence of a victim's records or communication, the military judge must conduct a hearing. Upon the motion of counsel for either party and upon good cause shown, the military judge may order the hearing closed. At the hearing, the parties may call witnesses, including the victim, and offer other relevant evidence. The victim must be afforded a reasonable opportunity to attend the hearing and be heard at the victim's own expense unless the victim has been otherwise subpoenaed or ordered to appear at the hearing. The right to be heard under this rule includes the right to be heard through counsel. However, the proceedings may not be unduly delayed for this purpose. In a case before a court-martial composed of a military judge and members, the military judge must conduct the hearing outside the presence of the members.''

(k) Mil. R. Evid. 615(e) is amended to read as follows:

''(e) A victim of an offense from the trial of an accused for that offense, unless the military judge, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that hearing or proceeding.''

Sec. 3. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 5, Article 81—Conspiracy, subsection a. is amended to read as follows:

''a. Text of statute.

(a) Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

(b) Any person subject to this chapter who conspires with any other person to commit an offense under the law of war, and who knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a court-martial or military commission may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a court-martial or military commission may direct.''

(b) Paragraph 5, Article 81—Conspiracy, subsection b. is amended to read as follows:

''b. *Elements.*

(1) *Conspiracy.*

(a) That the accused entered into an agreement with one or more persons to commit an offense under the UCMJ; and

(b) That, while the agreement continued to exist, and while the accused remained a party to the agreement, the accused or at least one of the co-conspirators performed an overt act for the purpose of bringing about the object of the conspiracy.

(2) *Conspiracy when offense is an offense under the law of war resulting in the death of one or more victims.*

(a) That the accused entered into an agreement with one or more persons to commit an offense under the law of war;

(b) That, while the agreement continued to exist, and while the accused remained a party to the agreement, the accused knowingly performed an overt act for the purpose of bringing about the object of the conspiracy; and

(c) That death resulted to one or more victims.''

(c) Paragraph 5, Article 81—Conspiracy, paragraph e. is amended by adding ''However, if the offense is also an offense under the law of war, the person knowingly performed an overt act for the purpose of bringing about the object of the conspiracy, and death results to one or more victims, the death penalty shall be an available punishment.'' to the end of the paragraph.

(d) Paragraph 5, Article 81—Conspiracy, paragraph f. is amended to read as follows:

''f. *Sample specifications.*

(1) *Conspiracy.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20 __ _____, conspired with __ _____ (and __ _____) to commit an offense under the Uniform Code of Military Justice, to wit: (larceny of __ _____, of a value of (about) $ __ _____, the property of __ _____), and in order to effect the object of the conspiracy the said __ _____ (and __ _____) did __ _____.

(2) *Conspiracy when offense is an offense under the law of war resulting in the death of one or more victims.*

In that __ _____ _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about __ _____ 20 __ _____, conspired with __ _____ (and __ _____) to commit an offense under the law of war, to wit: (murder of __ _____), and in order to effect the object of the conspiracy the said __ _____ knowingly did __ _____ resulting in the death of __ _____ _____.''

(e) Paragraph 16, Article 92—Failure to obey order or regulation, is amended by inserting the following text after subparagraph b(3)(c) and adding a new subparagraph b(3)(d):

''(Note: In cases where the dereliction of duty resulted in death or grievous bodily harm, add the following as applicable)

(d) That such dereliction of duty resulted in death or grievous bodily harm to a person other than the accused.''

(f) Paragraph 16, Article 92—Failure to obey order or regulation, is amended by inserting new subparagraphs c(3)(e) and (f) as follows:

''(e) Grievous bodily harm. ''Grievous bodily harm'' means serious bodily injury. It does not include minor injuries, such as a black eye or a bloody nose, but does include fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other serious bodily injuries.

(f) Where the dereliction of duty resulted in death or grievous bodily harm, an intent to cause death or grievous bodily harm is not required.''

(g) Paragraph 16, Article 92—Failure to obey order or regulation, is amended by inserting new subparagraph e(3)(B), re-lettering the existing subparagraph e(3)(B) as subparagraph e(3)(C) and inserting a new subparagraph e(3)(D) as follows:

''(B) *Through neglect or culpable inefficiency resulting in death or grievous bodily harm.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 18 months.

(C) *Willful.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(D) *Willful dereliction of duty resulting in death or grievous bodily harm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.''

(h) Paragraph 16, Article 92—Failure to obey order or regulation, is amended by inserting new subparagraph f(4) as follows:

''(4) *Dereliction in the performance of duties.*

In that, __ _____ _____ (personal jurisdiction data), who (knew) (should have known) of his/her duties (at/on board—location) (subject-matter jurisdiction data, if required), (on or about __ 20 __) (from about __ _____ 20 __ __ to about __ _____20____), was derelict in the performance of those duties in that he/she (negligently) (willfully) (by culpable inefficiency) failed __ _____, as it was his/her duty to do (, and that such dereliction of duty resulted in (grievous bodily harm, to wit: (broken leg) (deep cut) (fractured skull) to) (the death of) __ _____ _____.)

(Note: For (1) and (2) above, the punishment set forth does not apply in the following cases: if, in the absence of the order or regulation which was violated or not obeyed, the accused would on the same facts be subject to conviction for another specific offense for which a lesser punishment is prescribed; or, if the violation or failure to obey is a breach of restraint imposed as a result of an order. In these instances, the maximum punishment is that specifically prescribed elsewhere for that particular offense.)''

(i) Paragraph 17, Article 93—Cruelty and maltreatment, paragraph e. is amended to read as follows:

'' e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.''

(j) Paragraph 57, Article 131—Perjury, paragraphs c. is amended by changing ''an investigation conducted under Article 32'' to ''a preliminary hearing conducted under Article 32'' and by changing ''an Article 32 investigation'' to ''an Article 32 preliminary hearing'' for offenses occurring on or after 26 December 2014.

(k) Paragraph 96, Article 134—Obstructing justice, paragraph f. is amended by changing ''an investigating officer'' to ''a preliminary hearing officer'' and by changing ''before such investigating officer'' to ''before such preliminary hearing officer'' for offenses occurring on or after 26 December 2014.

(l) Paragraph 96a, Article 134—Wrongful interference with an adverse administrative proceeding, paragraph f. is amended by changing ''an investigating officer'' to ''a preliminary hearing officer'' and by changing ''before such investigating officer'' to ''before such preliminary hearing officer'' for offenses occurring on or after 26 December 2014.

Sec. 4. Appendix 12, Maximum Punishment Chart is amended and reads as follows:

(a) Article 92, Failure to obey order, regulation, Dereliction in performance of duties is amended to read as follows:

''Through neglect or culpable inefficiency	None	3 mos.	2/3 3 mos.
Through neglect or culpable inefficiency resulting in death or grievous bodily harm.	BCD	18 mos.	Total
Willful	BCD	6 mos.	Total
Willful dereliction of duty resulting in death or grievous bodily harm	DD, BCD	3 yrs.	Total''

(b) Article 93, Cruelty & maltreatment of subordinates is amended to read as follows:

''Cruelty & maltreatment of subordinates	DD, BCD	2 yrs.	Total''

(c) Article 118, Murder is amended to delete the superscript ''[4]'' attached to ''Life'' under the heading ''*Confinement''* for ''article 118(1) or (4)''.

(d) Article 134 is amended by inserting a new section ''Stolen property: knowingly receiving, buying, concealing'' before the entry for Article 134 ''Straggling'' as follows:

''Stolen property: knowingly receiving, buying, concealing			
Of a value of $500.00 or less	BCD	6 mos.	Total
Of a value of more than $500.00	DD	3 yrs.	Total''

Sec. 5. Appendix 21, Analysis of Rules for Courts-Martial is amended as follows:

(a) Rule 201 is amended to insert the following at the end:

''*2014 Amendment.* The discussion was amended in light of *Solorio v. United States,* 483 U.S. 435 (1987). *O'Callahan v. Parker,* 395 U.S. 258 (1969), held that an offense under the Code could not be tried by court-martial unless the offense was ''service connected.'' *Solorio* overruled *O'Callahan.* The struck language was inadvertently left in prior revisions of the Manual.''

(b) Rule 201(f) is amended to insert the following at the end:

''*2014 Amendment:* R.C.M. 201(f)(2)(D) was created to implement Section 1705 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013, and applies to offenses occurring on or after 24 June 2014. Sec. 1705(c), P.L. 113–66.''

(c) Rule 305(i) is amended to insert the following at the end:

''*2014 Amendment:* R.C.M. 305(i)(2) was revised to implement Articles 6b(a)(2)(E) and 6b(a)(4)(A), UCMJ, as created by Section 1701 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013.''

(d) Rule 305 is amended to insert the following at the end:

''(n) *2014 Amendment:* R.C.M. 305(n) was created to implement Article 6b(a)(2)(E), UCMJ, as created by Section 1701 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013.''

(e) A new Analysis section is inserted for Rule 404A and reads as follows:

''*2014 Amendment.* This is a new rule created to implement Section 1702 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013, and applies to offenses occurring on or after 26 December 2014. Sec. 1702(d)(1), P.L. 113–66.

(f) The existing analysis to Rule 405 is removed and new analysis is inserted to read as follows:

''*2014 Amendment.* This rule was substantially revised by Section 1702 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013. This new rule takes effect on 26 December 2014. Sec. 1702(d)(1), P.L. 113–66. For offenses occurring prior to 26 December 2014, refer to prior versions of R.C.M. 405. For Article 32 hearings covering offenses occurring both before and on or after 26 December 2014, rules contained within prior versions of R.C.M. 405 should be used for offenses before 26 December 2014, and this rule should be used for offenses occurring on or after 26 December 2014.'' The analysis related to the prior version of R.C.M. 405 is located in Appendix 30.

(g) Rule 601(f) is amended by removing the word ''new'' before ''provision''

(h) Rule 601 is amended by inserting the following at the end:

''(g) *Parallel convening authorities.* The intent of this new provision is to allow a successor convening authority to exercise full authority over charges, without having to effectuate re-referral or potentially a new trial. The subsection incorporates a recommendation of the May 2013 report of the Defense Legal Policy Board (DLPB), Report of the Subcommittee on Military Justice in Combat Zones. The DLPB is a Federal Advisory Committee established to provide independent advice to the Secretary of Defense. The DLPB found that an inhibition to retaining cases in an area of operations is the inability of a convening authority to transmit a case to another convening authority after referral of charges without having to withdraw the charges.''

(i) Rule 801(a) is amended to insert the following at the end:

''*2014 Amendment:* R.C.M. 801(a)(6) was created to implement Section 1701 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013.''

(j) Rule 806(b) is amended by inserting the following at the end:

''*2014 Amendment:* R.C.M. 806(b)(2) was revised to implement Article 6b(a)(3), UCMJ, as created by Section 1701 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013.''

(k) Rule 906(b) is amended to insert the following at the end:

''*2014 Amendment:* R.C.M. 906(b)(8) was revised to implement Articles 6b(a)(2)(E) and 6b(a)(4)(A), UCMJ, as created by Section 1701 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013.''

(l) Rule 1001(a) is amended by inserting the following at the end:

''*2014 Amendment:* R.C.M. 1001(a)(1) was revised to implement Article 6b(a)(4)(B), UCMJ, as created by Section 1701 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013.''

(m) A new Analysis section is inserted for Rule 1001A and reads as follows:

''*2014 Amendment.* R.C.M. 1001A was added to implement Article 6b(a)(4)(B), UCMJ, as created by Section 1701 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013.

(n) Rule 1103A is amended to insert the following:

''This rule shall be implemented in a manner consistent with Executive Order 12958, as amended, concerning classified national security information.''

(o) Rule 1105(b) is amended to insert the following at the end:

''*2014 Amendment:* R.C.M. 1105(b) was revised to implement Section 1706 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013, and applies to offenses occurring on or after 24 June 2014.''

(p) Rule 1107(b) is amended to insert the following at the end:

''*2014 Amendment:* This subsection was revised to implement Article 60(c), UCMJ, as amended by Section 1702 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013, as well as Section 1706 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013, and applies to offenses occurring on or after 24 June 2014. For offenses occurring prior to 24 June 2014, refer to prior versions of R.C.M. 1107(b).''

(q) The existing analysis to Rule 1107(c) is removed and new analysis is inserted as follows:

''*2014 Amendment:* This subsection was substantially revised to implement Article 60(c), UCMJ, as amended by Section 1702 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013, and applies to offenses occurring on or after 24 June 2014. For offenses occurring prior to 24 June 2014, refer to prior versions of R.C.M. 1107(c).''

(r) The existing analysis to Rule 1107(d) is removed and new analysis is inserted as follows:

''*2014 Amendment:* This subsection was substantially revised to implement Article 60(c), UCMJ, as amended by Section 1702 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013, and applies to offenses occurring on or after 24 June 2014. For offenses occurring prior to 24 June 2014, refer to prior versions of R.C.M. 1107(d).''

(s) Rule 1107(f) is amended by inserting the following at the end:

''*2014 Amendment:* This subsection was revised to implement Article 60(c), UCMJ, as amended by Section 1702 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013, and applies to offenses occurring on or after 24 June 2014. For offenses occurring prior to 24 June 2014,

refer to prior versions of R.C.M. 1107(f).''

(t) Rule 1108(b) is amended by inserting the following at the end:

''*2014 Amendment:* This subsection was revised to implement Article 60(c), UCMJ, as amended by Section 1702 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013, and applies to offenses occurring on or after 24 June 2014. For offenses occurring prior to 24 June 2014, refer to prior versions of R.C.M. 1108(b).''

(u) Rule 1301(c) is amended by inserting the following at the end:

''*2014 Amendment:* This subsection was revised to implement Section 1705 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013, and applies to offenses occurring on or after 24 June 2014. Sec. 1705(c), P.L. 113–66.''

Sec. 6. Appendix 22, Analysis of the Military Rules of Evidence is amended as follows:

(a) Rule 412 is amended by inserting the following at the end:

''*2014 Amendment.* Rule 412(c)(2) was revised in accordance with *L.R.M. v. Kastenberg,* 72 M.J. 364 (C.A.A.F. 2013).''

(b) Rule 513 is amended by inserting the following at the end:

''*2014 Amendment.* Rule 513(e)(2) was revised in accordance with *L.R.M. v. Kastenberg,* 72 M.J. 364 (C.A.A.F. 2013).''

(c) Rule 514 is amended by inserting the following at the end:

''*2014 Amendment.* Rule 514(e)(2) was revised in accordance with *L.R.M. v. Kastenberg,* 72 M.J. 364 (C.A.A.F. 2013). Rule 514 was also revised to protect communications made to the DoD Safe Helpline, which is a crisis support service for victims of sexual assault in the Department of Defense. The DoD Safe Helpline was established in 2011 under a contract with the Rape, Abuse & Incest National Network.''

(d) Rule 615 is amended by inserting the following at the end:

''*2014 Amendment:* Rule 615(e) was revised to implement Section 1701 of the National Defense Authorization Act for Fiscal Year 2014, P.L. 113–66, 26 December 2013.''

Sec. 7. Appendix 23, Analysis of Punitive Articles is amended as follows:

Paragraph 16, Article 92—Failure to obey order or regulation, is amended by inserting the following at the end:

''*2014 Amendment.* Subsection b(3) was amended to increase the punishment for dereliction of duty when such dereliction results in grievous bodily harm or death. Subsection b(3)(d) incorporates a recommendation of the May 2013 report of the Defense Legal Policy Board (DLPB), Report of the Subcommittee on Military Justice in Combat Zones. The DLPB is a Federal Advisory Committee established to provide independent advice to the Secretary of Defense. The DLPB subcommittee primarily focused on civilian casualties in a deployed environment, and the DLPB found that the maximum punishment for dereliction of duty was not commensurate with the potential consequences of dereliction resulting in civilian casualties. The DLPB also found that the available punishment did not make alternative dispositions to court-martial a practical option because there was little incentive for an accused to accept these alternatives. This rule expands on the recommendation of the DLPB and includes elevated maximum punishment for dereliction of duty that results in death or grievous bodily harm suffered by any person.''

Sec. 8. The Discussion to Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) The Discussion following R.C.M. 201(a)(2) is amended to read as follows:

''Except insofar as required by the Constitution, the Code, or the Manual, such as persons listed under Article 2(a)(10), jurisdiction of courts-martial does not depend on where the offense was committed.''

(b) A new Discussion section is added immediately following R.C.M. 201(f)(2)(D):

''Pursuant to the National Defense Authorization Act for Fiscal Year 2014, only a general court-martial has jurisdiction over penetrative sex offenses under Articles 120, 120b, and 125, UCMJ.''

(c) A new Discussion section is added immediately after R.C.M. 305(i)(2)(A)(iv):

''Personal appearance by the victim is not required. A victim's right to be reasonably heard at a 7-day review may also be accomplished telephonically, by videoteleconference, or by written statement.''

(d) A new Discussion section is added immediately after R.C.M. 305(j)(1)(C):

''Upon a motion for release from pretrial confinement, a victim of an alleged offense committed by the prisoner has the right to reasonable, accurate, and timely notice of the motion and any hearing, the right to consult with counsel representing the government, and the right to be reasonably heard. Inability to reasonably afford a victim these rights shall not delay the proceedings.''

(e) A new Discussion section is added immediately after R.C.M. 305(n):

''For purposes of this rule, the term ''victim of an alleged offense'' means a person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under the UCMJ.''

(f) The discussion section following R.C.M. 404(e) is amended to read as follows:

''A preliminary hearing should be directed when it appears that the charges are of such a serious nature that trial by general court-martial may be warranted. *See* R.C.M. 405. If a preliminary hearing of the subject matter already has been conducted, see R.C.M. 405(b) and 405(e)(2).''

(g) A new Discussion section is added immediately following R.C.M. 404A(d):

''The purposes of this rule are to provide the accused with the documents used to make the determination to prefer charges and direct a preliminary hearing, and to allow the accused to prepare for the preliminary hearing. This rule is not intended to be a tool for discovery and does not impose the same discovery obligations found in R.C.M. 405 prior to amendments required by the National Defense Authorization Act for Fiscal Year 2014 or R.C.M. 701. Additional rules for disclosure of witnesses and other evidence in the preliminary hearing are provided in R.C.M. 405(g).''

(h) A new Discussion section is added immediately after R.C.M. 405(a):

''The function of the preliminary hearing is to ascertain and impartially weigh the facts needed for the limited scope and purpose of the preliminary hearing. The preliminary hearing is not intended to perfect a case against the accused and is not intended to serve as a means of discovery or to provide a right of confrontation required at trial. Determinations and recommendations of the preliminary hearing officer are advisory.

Failure to substantially comply with the requirements of Article 32, which failure prejudices the accused, may result in delay in disposition of the case or disapproval of the proceedings. See R.C.M. 905(b)(1) and 906(b)(3) concerning motions for appropriate relief relating to the preliminary hearing.

The accused may waive the preliminary hearing. *See* subsection (k) of this rule. In such case, no preliminary hearing need be held. However, the convening authority authorized to direct the preliminary hearing may direct that it be conducted notwithstanding the waiver.''

(i) A new Discussion section is added immediately after R.C.M. 405(d)(1):

''The preliminary hearing officer, if not a judge advocate, should be an officer in the grade of O-4 or higher. The preliminary hearing officer may seek legal advice concerning the preliminary hearing officer's responsibilities from an impartial source, but may not obtain such advice from counsel for any party or counsel for a victim.''

(j) A new Discussion section is added immediately after R.C.M. 405(e)(2):

''Except as set forth in subsection (h) below, the Mil. R. Evid. do not apply at a preliminary hearing. Except as prohibited elsewhere in this rule, a preliminary hearing officer may consider evidence, including hearsay, which would not be admissible at trial.''

(k) A new Discussion section is added immediately after R.C.M. 405(f)(2)(G):

''Unsworn statements by the accused, unlike those made under R.C.M. 1001(c)(2), shall be limited to matters in defense and mitigation.''

(l) A new Discussion section is added immediately after R.C.M. 405(g)(1)(C):

''A commanding officer's determination of whether an individual is available, as well as the means by which the individual is available, is a balancing test. The more important the testimony of the witness, the greater the difficulty, expense, delay, or effect on military operations must be to deny production of the witness. Based on operational necessity and mission requirements, the witness's commanding officer may authorize the witness to testify by video conference, telephone, or similar means of remote testimony. Factors to be considered in making this determination include the costs of producing the witness; the timing of the request for production of the witness; the potential delay in the proceeding that may be caused by the production of the witness; and the likelihood of significant interference with operational deployment, mission accomplishment, or essential training.''

(m) A new Discussion section is added immediately after R.C.M. 405(g)(2)(C):

''Factors to be considered in making this determination include the costs of producing the witness; the timing of the request for production of the witness; the potential delay in the proceeding that may be caused by the production of the witness; the willingness of the witness to testify in person; and, for child witnesses, the traumatic effect of providing in-person testimony. Civilian witnesses may not be compelled to provide testimony at a preliminary hearing. Civilian witnesses may be paid for travel and associated expenses to testify at a preliminary hearing. *See* Department of Defense Joint Travel Regulations.''

(n) A new Discussion section is added immediately after R.C.M. 405(g)(3)(B)(iii):

''A *subpoena duces tecum* to produce books, papers, documents, data, electronically stored information, or other objects for a preliminary hearing pursuant to Article 32 may be issued by counsel for the government. The preliminary hearing officer has no authority to issue a *subpoena duces tecum.* However, the preliminary hearing officer may direct counsel for the government to issue a *subpoena duces tecum* for defense-requested evidence.''

(o) A new Discussion section is added immediately after R.C.M. 405(h)(5):

''Before considering evidence offered under subsection (h)(2), the preliminary hearing officer must determine that the evidence offered is relevant for the limited scope and purpose of the hearing, that the evidence is proper under subsection (h)(2), and that the probative value of such evidence outweighs the danger of unfair prejudice to the alleged victim's privacy. The preliminary hearing officer shall set forth any limitations on the scope of such evidence.

Evidence offered under subsection (h)(2) above must be protected pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a. Although Mil. R. Evid. 412(b)(1)(C) allows admission of evidence of the victim's sexual behavior or predisposition at trial when it is constitutionally required, there is no constitutional requirement at an Article 32 hearing. There is likewise no constitutional requirement for a pretrial hearing officer to consider evidence under Mil. R. Evid. 513(d)(8), and 514(d)(6) at an Article 32 hearing. Evidence deemed admissible by the preliminary hearing officer should be made a part of the report of preliminary hearing. *See* subsection (j)(2)(C), *infra.* Evidence not considered, and the testimony taken during a closed hearing, should not be included in the report of preliminary hearing but should be appropriately safeguarded or sealed. The preliminary hearing officer and counsel representing the government are responsible for careful handling of any such evidence to prevent unauthorized viewing or disclosure.''

(p) A new Discussion section is added immediately after R.C.M. 405(i)(1):

''A preliminary hearing officer may only consider evidence within the limited purpose of the preliminary hearing and shall ensure that the scope of the hearing is limited to that purpose. When the preliminary hearing officer finds that evidence offered by either party is not within the scope of the hearing, he shall inform the parties and halt the presentation of that information.''

(q) A new Discussion section is added immediately after R.C.M. 405(i)(3)(A):

''The following oath may be given to witnesses:

''Do you (swear) (affirm) that the evidence you give shall be the truth, the whole truth, and nothing but the truth (so help you God)?''

The preliminary hearing officer is required to include in the report of the preliminary hearing a summary of the substance of all testimony. *See* subsection (j)(2)(B) of this rule. After the hearing, the preliminary hearing officer should, whenever possible, reduce the substance of the testimony of each witness to writing.

All substantially verbatim notes of testimony and recordings of testimony should be preserved until the end of trial.

If during the preliminary hearing any witness subject to the Code is suspected of an offense under the Code, the preliminary hearing officer should comply with the warning requirements of Mil. R. Evid. 305(c), (d), and, if necessary (e).

Bearing in mind that counsel are responsible for preparing and presenting their cases, the preliminary hearing officer may ask a witness questions relevant to the limited scope and purpose of the hearing. When questioning a witness, the preliminary hearing officer may not depart from an impartial role and become an advocate for either side.''

(r) A new Discussion section is added immediately after R.C.M. 405(i)(6):

''Counsel for the government shall provide victims with access to, or a copy of, the recording of the proceedings in accordance with such regulations as the Secretary concerned may prescribe.''

(s) A new Discussion section is added immediately after R.C.M. 405(j)(1):

''If practicable, the charges and the report of preliminary hearing should be forwarded to the general court-martial convening authority within 8 days after an accused is ordered into arrest or confinement. *See* Article 33, UCMJ.''

(t) A new Discussion section is added immediately after R.C.M. 405(j)(2)(K):

''The preliminary hearing officer may include any additional matters useful to the convening authority in determining disposition. The preliminary hearing officer may recommend that the charges and specifications be amended or that additional charges be preferred. *See*

R.C.M. 306 and 401 concerning other possible dispositions.''

(u) A new Discussion section is added immediately after R.C.M. 405(k):

''*See also* R.C.M. 905(b)(1); 906(b)(3).

The convening authority who receives an objection may direct that the preliminary hearing be reopened or take other action, as appropriate.''

(v) A new Discussion section is added immediately after R.C.M. 601(g):

''Parallel convening authorities are those convening authorities that possess the same court-martial jurisdiction authority. Examples of permissible transmittal of charges under this rule include the transmittal from a general court-martial convening authority to another general court-martial convening authority, or from one special court-martial convening authority to another special court-martial convening authority. It would be impracticable for an original convening authority to continue exercising authority over the charges, for example, when a command is being decommissioned or inactivated, or when deploying or redeploying and the accused is remaining behind. If charges have been referred, there is no requirement that the charges be withdrawn or dismissed prior to transfer. *See* R.C.M. 604. In the event that the case has been referred, the receiving convening authority may adopt the original court-martial convening order, including the court-martial panel selected to hear the case as indicated in that convening order. When charges are transmitted under this rule, no recommendation as to disposition may be made.''

(w) A new Discussion section is added immediately after R.C.M. 801(a)(6)(A):

''The rights that a designee may exercise on behalf of a victim include the right to receive notice of public hearings in the case; the right to be reasonably heard at such hearings, if permitted by law; and the right to confer with counsel representing the government at such hearings. The designee may also be the custodial guardian of the child.

When determining whom to appoint under this rule, the military judge may consider the following: the age and maturity, relationship to the victim, and physical proximity of any proposed designee; the costs incurred in effecting the appointment; the willingness of the proposed designee to serve in such a role; the previous appointment of a guardian by another court of competent jurisdiction; the preference of the victim; any potential delay in any proceeding that may be caused by a specific appointment; and any other relevant information.''

(x) A new Discussion section is added immediately after R.C.M. 801(a)(6)(B)(i):

''In the event a case involves multiple victims who are entitled to notice under this rule, each victim is only entitled to notice relating to their own designated representative.''

(y) A new Discussion section is added immediately after R.C.M. 801(a)(6)(D):

''The term ''victim of an offense under the UCMJ'' means a person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under the UCMJ. ''Good Cause'' means adequate or reasonable grounds to believe that the individual appointed to assume the victim's rights is not acting or does not intend to act in the best interest of the victim.''

(z) The Discussion section following R.C.M. 806(b)(1) is amended to read as follows:

''The military judge must ensure that the dignity and decorum of the proceedings are maintained and that the other rights and interests of the parties and society are protected. Public access to a session may be limited, specific persons excluded from the courtroom, and, under unusual circumstances, a session may be closed.

Exclusion of specific persons, if unreasonable under the circumstances, may violate the accused's right to a public trial, even though other spectators remain. Whenever specific persons or some members of the public are excluded, exclusion must be limited in time and scope to the minimum extent necessary to achieve the purpose for which it is ordered. Prevention of overcrowding or noise may justify limiting access to the courtroom. Disruptive or distracting appearance or conduct may justify excluding specific persons. Specific persons may be excluded when necessary to protect witnesses from harm or intimidation. Access may be reduced when no other means is available to relieve a witness' inability to testify due to embarrassment or extreme nervousness. Witnesses will ordinarily be excluded from the courtroom so that they cannot hear the testimony of other witnesses. *See* Mil. R. Evid. 615.

For purposes of this rule, the term ''victim of an alleged offense'' means a person who has suffered direct, physical, emotional, or pecuniary harm as a result of the commission of an offense under the UCMJ.''

(aa) The discussion section following R.C.M. 906(b)(9) is amended to read as follows:

''A motion for severance is a request that one or more accused against whom charges have been referred to a joint or common trial be tried separately. Such a request should be granted if good cause is shown. For example, a severance may be appropriate when: the moving party wishes to use the testimony of one or more of the coaccused or the spouse of a coaccused; a defense of a coaccused is antagonistic to the moving party; or evidence as to any other accused will improperly prejudice the moving accused.

If a severance is granted by the military judge, the military judge will decide which accused will be tried first. *See* R.C.M. 801(a)(1). In the case of joint charges, the military judge will direct an appropriate amendment of the charges and specifications.

See also R.C.M. 307(c)(5); 601(e)(3); 604; 812.''

(bb) A new Discussion section is added immediately after R.C.M. 1103A(b)(3):

''A convening authority who has granted clemency based upon review of sealed materials in the record of trial is not permitted to disclose the contents of the sealed materials when providing a written explanation of the reason for such action, as directed under R.C.M. 1107.''

(cc) The Discussion section following R.C.M. 1106(d)(3) is amended to read as follows:

''The recommendation required by this rule need not include information regarding other recommendations for clemency. It may include a summary of clemency actions authorized under R.C.M. 1107. *See* R.C.M. 1105(b)(2)(D) (pertaining to clemency recommendations that may be submitted by the accused to the convening authority).''

(dd) The Discussion section immediately following R.C.M. 1107(c) is deleted.

(ee) A new Discussion section is added immediately after R.C.M. 1107(d)(1)(E)(i):

''The phrase ''investigation or prosecution of another person who has committed an offense'' includes offenses under the UCMJ or other Federal, State, local, or foreign criminal statutes.''

(ff) The Discussion section immediately following R.C.M. 1107(d)(1) is deleted.

(gg) A new Discussion section is added immediately after R.C.M. 1107(d)(1)(F):

''A sentence adjudged by a court-martial may be approved if it was within the jurisdiction of the court-martial to adjudge (*see* R.C.M. 201(f)) and did not exceed the maximum limits

prescribed in Part IV and Chapter X of this Part for the offense(s) of which the accused legally has been found guilty.

When mitigating forfeitures, the duration and amounts of forfeiture may be changed as long as the total amount forfeited is not increased and neither the amount nor duration of the forfeitures exceeds the jurisdiction of the court-martial. When mitigating confinement or hard labor without confinement, the convening authority should use the equivalencies at R.C.M. 1003(b)(5)–(6), as appropriate.

Unless prohibited by this rule, the convening authority may disapprove, mitigate or change to a less severe punishment any individual component of a sentence. For example, if an accused is found guilty of assault consummated by a battery and sentenced to a bad-conduct discharge, three months of confinement, and reduction to E–1, without a pre-trial agreement and without being able to apply the substantial assistance exception, the convening authority may disapprove or reduce any part of the sentence except the bad-conduct discharge.''

(hh) The Discussion section following R.C.M. 1107(d)(2) is amended to read as follows:

''In determining what sentence should be approved, the convening authority should consider all relevant and permissible factors including the possibility of rehabilitation, the deterrent effect of the sentence, and all matters relating to clemency, such as pretrial confinement. *See also* R.C.M. 1001–1004.

When an accused is not serving confinement, the accused should not be deprived of more than two-thirds pay for any month as a result of one or more sentences by court-martial and other stoppages or involuntary deductions, unless requested by the accused. Since court-martial forfeitures constitute a loss of entitlement of the pay concerned, they take precedence over all debts.''

(ii) The Discussion section following R.C.M. 1107(d)(1)(E)(i) is amended to read as follows:

''The phrase ''investigation or prosecution of another person who has committed an offense'' includes offenses under the UCMJ or other Federal, State, local, or foreign criminal statutes.''

(jj) A new Discussion section is added immediately after R.C.M. 1301(c)(2):

''Pursuant to the National Defense Authorization Act for Fiscal Year 2014, only a general court-martial has jurisdiction to try penetrative sex offenses under Articles 120, 120b, and 125, UCMJ.''

(kk) The Discussion sections to R.C.M. 406(b)(4), R.C.M. 503(a)(1), and 707(c)(1) are amended by changing ''investigating officer'' to ''preliminary hearing officer'' for offenses occurring on or after 26 December 2014.

(ll) The Discussion section to R.C.M. 701(a)(6)(c) is amended by changing ''report of Article 32 investigation'' to ''report of Article 32 preliminary hearing'' for offenses occurring on or after 26 December 2014.

(mm) The Discussion section to R.C.M. 705(d)(2) and R.C.M. 919(b) are amended by changing ''Article 32 investigation'' to ''Article 32 preliminary hearing'' for offenses occurring on or after 26 December 2014.

Sec. 9. The Discussion to Part IV of the Manual for Courts-Martial, United States, is amended as follows:

A new Discussion section is added immediately following Paragraph 16, Article 92—Failure to obey order or regulation, subsection e(3)(d):

''If the dereliction of duty resulted in death, the accused may also be charged under Article 119 or Article 134 (negligent homicide), as applicable.''

Sec. 10. A new appendix, Appendix 29 is inserted to read as follows:

''Appendix 29

Rules for Courts-Martial Applicable to Offenses Committed Before 24 June 2014

The Rules for Courts-Martial in this appendix were revised to implement Sections 1705, and 1706 of the National Defense Authorization Act for Fiscal Year 2014, Public Law 113–66, 26 December 2013. For offenses committed before 24 June 2014, the relevant Rules for Courts-Martial are contained in this appendix and listed below.

Rule 201. Jurisdiction in General

(f) *Types of courts-martial.*

(1) *General courts-martial.*

(A) *Cases under the code.*

(i) Except as otherwise expressly provided, general courts-martial may try any person subject to the code for any offense made punishable under the code. General courts-martial also may try any person for a violation of Article 83, 104, or 106.

(ii) Upon a finding of guilty of an offense made punishable by the code, general courts-martial may, within limits prescribed by this Manual, adjudge any punishment authorized under R.C.M. 1003.

(iii) Notwithstanding any other rule, the death penalty may not be adjudged if:

(a) Not specifically authorized for the offenses by the code and Part IV of this Manual; or

(b) The case has not been referred with a special instruction that the case is to be tried as capital.

(B) *Cases under the law of war.*

(i) General courts-martial may try any person who by the law of war is subject to trial by military tribunal for any crime or offense against:

(a) The law of war; or

(b) The law of the territory occupied as an incident of war or belligerency whenever the local civil authority is superseded in whole or part by the military authority of the occupying power. The law of the occupied territory includes the local criminal law as adopted or modified by competent authority, and the proclamations, ordinances, regulations, or orders promulgated by competent authority of the occupying power.

Discussion

Subsection (f)(1)(B)(i)(b) is an exercise of the power of military government.

(ii) When a general court-martial exercises jurisdiction under the law of war, it may adjudge any punishment permitted by the law of war.

Discussion

Certain limitations on the discretion of military tribunals to adjudge punishment under the law of war are prescribed in international conventions. *See,* for example, Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 68, 6 U.S.T. 3516, T.I.A.S. No. 3365.

(C) *Limitations in judge alone cases.* A general court-martial composed only of a military judge does not have jurisdiction to try any person for any offense for which the death penalty may be adjudged unless the case has been referred to trial as noncapital.

(2) *Special courts-martial.*

(A) *In general.* Except as otherwise expressly provided, special courts-martial may try any person subject to the code for any noncapital offense made punishable by the code and, as provided in this rule, for capital offenses.

(B) *Punishments.*

(i) Upon a finding of guilty, special courts-martial may adjudge, under limitations prescribed by this Manual, any punishment authorized under R.C.M. 1003 except death, dishonorable discharge, dismissal, confinement for more than 1 year, hard labor without confinement for more than 3 months, forfeiture of pay exceeding two-thirds pay per month, or any forfeiture of pay for more than 1 year.

(ii) A bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, may not be adjudged by a special court-martial unless:

(a) Counsel qualified under Article 27(b) is detailed to represent the accused; and

(b) A military judge is detailed to the trial, except in a case in which a military judge could not be detailed because of physical conditions or military exigencies. Physical conditions or military exigencies, as the terms are here used, may exist under rare circumstances, such as on an isolated ship on the high seas or in a unit in an inaccessible area, provided compelling reasons exist why trial must be held at that time and at that place. Mere inconvenience does not constitute a physical condition or military exigency and does not excuse a failure to detail a military judge. If a military judge cannot be detailed because of physical conditions or military exigencies, a bad-conduct discharge, confinement for more

than six months, or forfeiture of pay for more than six months, may be adjudged provided the other conditions have been met. In that event, however, the convening authority shall, prior to trial, make a written statement explaining why a military judge could not be obtained. This statement shall be appended to the record of trial and shall set forth in detail the reasons why a military judge could not be detailed, and why the trial had to be held at that time and place.

Discussion

See R.C.M. 503 concerning detailing the military judge and counsel.

The requirement for counsel is satisfied when counsel qualified under Article 27(b), and not otherwise disqualified, has been detailed and made available, even though the accused may not choose to cooperate with, or use the services of, such detailed counsel.

The physical condition or military exigency exception to the requirement for a military judge does not apply to the requirement for detailing counsel qualified under Article 27(b).

See also R.C.M. 1103(c) concerning the requirements for a record of trial in special courts-martial.

(C) *Capital offenses*

(i) A capital offense for which there is prescribed a mandatory punishment beyond the punitive power of a special court-martial shall not be referred to such a court-martial.

(ii) An officer exercising general court-martial jurisdiction over the command which includes the accused may permit any capital offense other than one described in subsection (f)(2)(C)(i) of this rule to be referred to a special court-martial for trial.

(iii) The Secretary concerned may authorize, by regulation, officers exercising special court-martial jurisdiction to refer capital offenses, other than those described in subsection (f)(2)(C)(i) of this rule, to trial by special court-martial without first obtaining the consent of the officer exercising general court-martial jurisdiction over the command.

Discussion

See R.C.M. 103(3) for a definition of capital offenses.

(3) *Summary courts-martial. See* R.C.M. 1301(c) and (d)(1).

Rule 1105. Matters Submitted by the Accused

(b) *Matters which may be submitted.*

(1) The accused may submit to the convening authority any matters that may reasonably tend to affect the convening authority's decision whether to disapprove any findings of guilty or to approve the sentence. The convening authority is only required to consider written submissions.

(2) Submissions are not subject to the Military Rules of Evidence and may include:

* * * * *

(C) Matters in mitigation which were not available for consideration at the court-martial; and

Rule 1107. Action by Convening Authority

(b) *General considerations.*

(1) *Discretion of convening authority.* The action to be taken on the findings and sentence is within the sole discretion of the convening authority. Determining what action to take on the findings and sentence of a court-martial is a matter of command prerogative. The convening authority is not required to review the case for legal errors or factual sufficiency.

Discussion

The action is taken in the interests of justice, discipline, mission requirements, clemency, and other appropriate reasons. If errors are noticed by the convening authority, the convening authority may take corrective action under this rule.

(2) *When action may be taken.* The convening authority may take action only after the applicable time periods under R.C.M. 1105(c) have expired or the accused has waived the right to present matters under R.C.M. 1105(d), whichever is earlier, subject to regulations of the Secretary concerned.

(3) *Matters considered.*

(A) *Required matters.* Before taking action, the convening authority shall consider:

(i) The result of trial;

Discussion

See R.C.M. 1101(a).

(ii) The recommendation of the staff judge advocate or legal officer under R.C.M. 1106, if applicable; and

(iii) Any matters submitted by the accused under R.C.M. 1105 or, if applicable, R.C.M. 1106(f).

(B) *Additional matters.* Before taking action the convening authority may consider:

(i) The record of trial;

(ii) The personnel records of the accused; and

(iii) Such other matters as the convening authority deems appropriate. However, if the convening authority considers matters adverse to the accused from outside the record, with knowledge of which the accused is not chargeable, the accused shall be notified and given an opportunity to rebut.

(4) *When proceedings resulted in finding of not guilty or not guilty only by reason of lack of mental responsibility, or there was a ruling amounting to a finding of not guilty.* The convening authority shall not take action disapproving a finding of not guilty, a finding of not guilty only by reason of lack of mental responsibility, or a ruling amounting to a finding of not guilty. When an accused is found not guilty only by reason of lack of mental responsibility, the convening authority, however, shall commit the accused to a suitable facility pending a hearing and disposition in accordance with R.C.M. 1102A.

Discussion

Commitment of the accused to the custody of the Attorney General for hospitalization is discretionary.

(5) *Action when accused lacks mental capacity.* The convening authority may not approve a sentence while the accused lacks mental capacity to understand and to conduct or cooperate intelligently in the post-trial proceedings. In the absence of substantial evidence to the contrary, the accused is presumed to have the capacity to understand and to conduct or cooperate intelligently in the post-trial proceedings. If a substantial question is raised as to the requisite mental capacity of the accused, the convening authority may direct an examination of the accused in accordance with R.C.M. 706 before deciding whether the accused lacks mental capacity, but the examination may be limited to determining the accused's present capacity to understand and cooperate in the post-trial proceedings. The convening authority may approve the sentence unless it is established, by a preponderance of the evidence—including matters outside the record of trial—that the accused does not have the requisite mental capacity. Nothing in this subsection shall prohibit the convening authority from disapproving the findings of guilty and sentence.

(c) *Action on findings.* Action on the findings is not required. However, the convening authority may, in the convening authority's sole discretion:

(1) Change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification; or

(2) Set aside any finding of guilty and—

(A) Dismiss the specification and, if appropriate, the charge, or

(B) Direct a rehearing in accordance with subsection (e) of this rule.

Discussion

The convening authority may for any reason or no reason disapprove a finding of guilty or approve a finding of guilty only of a lesser offense. However, *see* subsection (e) of this rule if a rehearing is ordered. The convening authority is not required to review the findings for legal or factual sufficiency and is not required to explain a decision to order or not to order a rehearing, except as provided in subsection (e) of this rule. The power to order a rehearing, or to take other corrective action on the findings, is designed solely to provide an expeditious means to correct errors that are identified in the course of exercising discretion under the rule.

(d) *Action on the sentence.*

(1) *In general.* The convening authority may for any or no reason disapprove a legal sentence in whole or in part, mitigate the sentence, and change a punishment to one of a different nature as long as the severity of the punishment is not increased. The convening or higher authority may not increase the punishment imposed by a court-martial. The approval or disapproval shall be explicitly stated.

Discussion

A sentence adjudged by a court-martial may be approved if it was within the jurisdiction of the court-martial to adjudge (*see* R.C.M. 201(f)) and did not exceed the maximum limits prescribed in Part IV and Chapter X of this Part for the offense(s) of which the accused legally has been found guilty.

When mitigating forfeitures, the duration and amounts of forfeiture may be changed as long as the total amount forfeited is not increased and neither the amount nor duration of the forfeitures exceeds the

jurisdiction of the court-martial. When mitigating confinement or hard labor without confinement, the convening authority should use the equivalencies at R.C.M. 1003(b)(5) and (6), as appropriate. One form of punishment may be changed to a less severe punishment of a different nature, as long as the changed punishment is one that the court-martial could have adjudged. For example, a bad-conduct discharge adjudged by a special court-martial could be changed to confinement for up to one year (but not vice versa). A pretrial agreement may also affect what punishments may be changed by the convening authority.

See also R.C.M. 810(d) concerning sentence limitations upon a rehearing or new or other trial.

(2) *Determining what sentence should be approved.* The convening authority shall approve that sentence which is warranted by the circumstances of the offense and appropriate for the accused. When the court-martial has adjudged a mandatory punishment, the convening authority may nevertheless approve a lesser sentence.

Discussion

In determining what sentence should be approved the convening authority should consider all relevant factors including the possibility of rehabilitation, the deterrent effect of the sentence, and all matters relating to clemency, such as pretrial confinement. *See also* R.C.M. 1001 through 1004.

When an accused is not serving confinement, the accused should not be deprived of more than two-thirds pay for any month as a result of one or more sentences by court-martial and other stoppages or involuntary deductions, unless requested by the accused. Since court-martial forfeitures constitute a loss of entitlement of the pay concerned, they take precedence over all debts.

(3) *Deferring service of a sentence to confinement.*

(A) In a case in which a court-martial sentences an accused referred to in subsection (B), below, to confinement, the convening authority may defer service of a sentence to confinement by a court-martial, without the consent of the accused, until after the accused has been permanently released to the armed forces by a state or foreign country.

(B) Subsection (A) applies to an accused who, while in custody of a state or foreign country, is temporarily returned by that state or foreign country to the armed forces for trial by court-martial; and after the court-martial, is returned to that state or foreign country under the authority of a mutual agreement or treaty, as the case may be.

(C) As used in subsection (d)(3), the term ''state'' means a state of the United States, the District of Columbia, a territory, and a possession of the United States.

Discussion

The convening authority's decision to postpone service of a court-martial sentence to confinement normally should be reflected in the action.

(4) *Limitations on sentence based on record of trial.* If the record of trial does not meet the requirements of R.C.M. 1103(b)(2)(B) or (c)(1), the convening authority may not approve a sentence in excess of that which may be adjudged by a special court-martial, or one that includes a bad-conduct discharge, confinement for more than six months, forfeiture of pay exceeding two-thirds pay per month, or any forfeiture of pay for more than six months.

Discussion

See also R.C.M. 1103(f).

(5) *Limitations on sentence of a special court-martial where a fine has been adjudged.* A convening authority may not approve in its entirety a sentence adjudged at a special court-martial when, if approved, the cumulative impact of the fine and forfeitures, whether adjudged or by operation of Article 58b, would exceed the jurisdictional maximum dollar amount of forfeitures that may be adjudged at that court-martial.

(e) *Ordering rehearing or other trial.*

(1) *Rehearing.*

(A) *In general.* Subject to subsections (e)(1)(B) through (e)(1)(E) of this rule, the convening authority may in the convening authority's discretion order a rehearing. A rehearing may be ordered as to some or all offenses of which findings of guilty were entered and the sentence, or as to sentence only.

Discussion

A rehearing may be appropriate when an error substantially affecting the findings or sentence is noticed by the convening authority. The severity of the findings or the sentence of the original court-martial may not be increased at a rehearing unless the sentence prescribed for the offense is mandatory. *See* R.C.M. 810(d). If the accused is placed under restraint pending a rehearing, *see* R.C.M. 304; 305.

(B) *When the convening authority may order a rehearing.* The convening authority may order a rehearing:

(i) When taking action on the court-martial under this rule;

(ii) In cases subject to review by the Court of Criminal Appeals, before the case is forwarded under R.C.M. 1111(a)(1) or (b)(1), but only as to any sentence which was approved or findings of guilty which were not disapproved in any earlier action. In such a case, a supplemental action disapproving the sentence and some or all of the findings, as appropriate, shall be taken; or

(iii) *When authorized to do so by superior competent authority.* If the convening authority finds a rehearing as to any offenses impracticable, the convening authority may dismiss those specifications and, when appropriate, charges.

Discussion

A sentence rehearing, rather than a reassessment, may be more appropriate in cases where a significant part of the government's case has been dismissed. The convening authority may not take any actions inconsistent with directives of superior competent authority. Where that directive is unclear, appropriate clarification should be sought from the authority issuing the original directive.

(iv) *Sentence reassessment.* If a superior authority has approved some of the findings of guilty and has authorized a rehearing as to other offenses and the sentence, the convening authority may, unless otherwise directed, reassess the sentence based on the approved findings of guilty and dismiss the remaining charges. Reassessment is appropriate only where the convening authority determines that the accused's sentence would have been at least of a certain magnitude had the prejudicial error not been committed and the reassessed sentence is appropriate in relation to the affirmed findings of guilty.

(C) *Limitations.*

(i) *Sentence approved.* A rehearing shall not be ordered if, in the same action, a sentence is approved.

(ii) *Lack of sufficient evidence.* A rehearing may not be ordered as to findings of guilty when there is a lack of sufficient evidence in the record to support the findings of guilty of the offense charged or of any lesser included offense. A rehearing may be ordered, however, if the proof of guilt consisted of inadmissible evidence for which there is available an admissible substitute. A rehearing may be ordered as to any lesser offense included in an offense of which the accused was found guilty, provided there is sufficient evidence in the record to support the lesser included offense.

Discussion

For example, if proof of absence without leave was by improperly authenticated documentary evidence admitted over the objection of the defense, the convening authority may disapprove the findings of guilty and sentence and order a rehearing if there is reason to believe that properly authenticated documentary evidence or other admissible evidence of guilt will be available at the rehearing. On the other hand, if no proof of unauthorized absence was introduced at trial, a rehearing may not be ordered.

(iii) *Rehearing on sentence only.* A rehearing on sentence only shall not be referred to a different kind of court-martial from that which made the original findings. If the convening authority determines a rehearing on sentence is impracticable, the convening authority may approve a sentence of no punishment without conducting a rehearing.

(D) *Additional charges.* Additional charges may be referred for trial together with charges as to which a rehearing has been directed.

(E) *Lesser included offenses.* If at a previous trial the accused was convicted of a lesser included offense, a rehearing may be ordered only as to that included offense or as to an offense included in that found. If, however, a rehearing is ordered improperly on the original offense charged and the accused is convicted of that offense at the rehearing, the finding as to the lesser included offense of which the accused was convicted at the original trial may nevertheless be approved.

(2) *''Other'' trial.* The convening or higher authority may order an ''other'' trial if the original proceedings were invalid because of lack of jurisdiction or failure of a

specification to state an offense. The authority ordering an ''other'' trial shall state in the action the basis for declaring the proceedings invalid.

(f) *Contents of action and related matters.*

(1) *In general.* The convening authority shall state in writing and insert in the record of trial the convening authority's decision as to the sentence, whether any findings of guilty are disapproved, and orders as to further disposition. The action shall be signed personally by the convening authority. The convening authority's authority to sign shall appear below the signature.

Discussion

See Appendix 16 for forms.

(2) *Modification of initial action.* The convening authority may recall and modify any action taken by that convening authority at any time before it has been published or before the accused has been officially notified. The convening authority may also recall and modify any action at any time prior to forwarding the record for review, as long as the modification does not result in action less favorable to the accused than the earlier action. In addition, in any special court-martial, the convening authority may recall and correct an illegal, erroneous, incomplete, or ambiguous action at any time before completion of review under R.C.M. 1112, as long as the correction does not result in action less favorable to the accused than the earlier action. When so directed by a higher reviewing authority or the Judge Advocate General, the convening authority shall modify any incomplete, ambiguous, void, or inaccurate action noted in review of the record of trial under Article 64, 66, 67, or examination of the record of trial under Article 69. The convening authority shall personally sign any supplementary or corrective action.

Discussion

For purposes of this rule, a record is considered to have been forwarded for review when the convening authority has either delivered it in person or has entrusted it for delivery to a third party over whom the convening authority exercises no lawful control (*e.g.,* the United States Postal Service).

(3) *Findings of guilty.* If any findings of guilty are disapproved, the action shall so state. If a rehearing is not ordered, the affected charges and specifications shall be dismissed by the convening authority in the action. If a rehearing or other trial is directed the reasons for the disapproval shall be set forth in the action.

Discussion

If a rehearing or other trial is not directed, the reasons for disapproval need not be stated in the action, but they may be when appropriate. It may be appropriate to state them when the reasons may affect administrative disposition of the accused; for example, when the finding is disapproved because of the lack of mental responsibility of the accused or the running of the statute of limitations.

No express action is necessary to approve findings of guilty.

See subsection (c) of this rule.

(4) *Action on sentence.*

(A) *In general.* The action shall state whether the sentence adjudged by the court-martial is approved. If only part of the sentence is approved, the action shall state which parts are approved. A rehearing may not be directed if any sentence is approved.

Discussion

See Appendix 16 for forms.

See R.C.M. 1108 concerning suspension of sentences.

See R.C.M. 1113 concerning execution of sentences.

(B) *Execution; suspension.* The action shall indicate, when appropriate, whether an approved sentence is to be executed or whether the execution of all or any part of the sentence is to be suspended. No reasons need be stated.

(C) *Place of confinement.* If the convening authority orders a sentence of confinement into execution, the convening authority shall designate the place of confinement in the action, unless otherwise prescribed by the Secretary concerned. If a sentence of confinement is ordered into execution after the initial action of the convening authority, the authority ordering the execution shall designate the place of confinement unless otherwise prescribed by the Secretary concerned.

Discussion

See R.C.M. 1113(e)(2)(C) concerning the place of confinement.

(D) *Custody or confinement pending appellate review; capital cases.* When a record of trial involves an approved sentence to death, the convening authority shall, unless any approved sentence of confinement has been ordered into execution and a place of confinement designated, provide in the action for the temporary custody or confinement of the accused pending final disposition of the case on appellate review.

(E) *Deferment of service of sentence to confinement.* Whenever the service of the sentence to confinement is deferred by the convening authority under R.C.M. 1101(c) before or concurrently with the initial action in the case, the action shall include the date on which the deferment became effective. The reason for the deferment need not be stated in the action.

(F) *Credit for illegal pretrial confinement.* When the military judge has directed that the accused receive credit under R.C.M. 305(k), the convening authority shall so direct in the action.

(G) *Reprimand.* The convening authority shall include in the action any reprimand which the convening authority has ordered executed.

Discussion

See R.C.M. 1003(b)(1) concerning reprimands.

(5) *Action on rehearing or new or other trial.*

(A) *Rehearing or other trial.* In acting on a rehearing or other trial the convening authority shall be subject to the sentence limitations prescribed in R.C.M. 810(d). Except when a rehearing or other trial is combined with a trial on additional offenses and except as otherwise provided in R.C.M. 810(d), if any part of the original sentence was suspended and the suspension was not properly vacated before the order directing the rehearing, the convening authority shall take the necessary suspension action to prevent an increase in the same type of punishment as was previously suspended. The convening authority may approve a sentence adjudged upon a rehearing or other trial regardless whether any kind or amount of the punishment adjudged at the former trial has been served or executed. However, in computing the term or amount of punishment to be actually served or executed under the new sentence, the accused shall be credited with any kind or amount of the former sentence included within the new sentence that was served or executed before the time it was disapproved or set aside. The convening authority shall, if any part of a sentence adjudged upon a rehearing or other trial is approved, direct in the action that any part or amount of the former sentence served or executed between the date it was adjudged and the date it was disapproved or set aside shall be credited to the accused. If, in the action on the record of a rehearing, the convening authority disapproves the findings of guilty of all charges and specifications which were tried at the former hearing and that part of the sentence which was based on these findings, the convening authority shall, unless a further rehearing is ordered, provide in the action that all rights, privileges, and property affected by any executed portion of the sentence adjudged at the former hearing shall be restored. The convening authority shall take the same restorative action if a court-martial at a rehearing acquits the accused of all charges and specifications which were tried at the former hearing.

(B) *New trial.* The action of the convening authority on a new trial shall, insofar as practicable, conform to the rules prescribed for rehearings and other trials in subsection (f)(5)(A) of this rule.

Discussion

See R.C.M. 810 for procedures at other trials.

In approving a sentence not in excess of or more severe than one previously approved (*see* R.C.M. 810(d)), a convening authority is prohibited from approving a punitive discharge more severe than one formerly approved, e.g., a convening authority is prohibited from approving a dishonorable discharge if a bad conduct discharge had formerly been approved. Otherwise, in approving a sentence not in excess of or more severe than one previously imposed, a convening authority is not limited to approving the same or lesser type of ''other punishments'' formerly approved.

Rule 1108. Suspension of Execution of Sentence; Remission

(b) *Who may suspend and remit.* The convening authority may, after approving the sentence, suspend the execution of all or any part of the sentence of a court-martial, except for a sentence of death. The general court-martial convening authority over the accused at the time of the court-martial may, when taking the action under R.C.M. 1112(f),

suspend or remit any part of the sentence. The Secretary concerned and, when designated by the Secretary concerned, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may suspend or remit any part or amount of the unexecuted part of any sentence other than a sentence approved by the President or a sentence of confinement for life without eligibility for parole that has been ordered executed. The Secretary concerned may, however, suspend or remit the unexecuted part of a sentence of confinement for life without eligibility for parole only after the service of a period of confinement of not less than 20 years. The commander of the accused who has the authority to convene a court-martial of the kind that adjudged the sentence may suspend or remit any part of the unexecuted part of any sentence by summary court-martial or of any sentence by special court- martial that does not include a bad-conduct discharge regardless of whether the person acting has previously approved the sentence. The ''unexecuted part of any sentence'' is that part that has been approved and ordered executed but that has not actually been carried out.

Discussion

See R.C.M. 1113 (execution of sentences); R.C.M. 1201 (action by the Judge Advocate General); R.C.M. 1206 (powers and responsibilities of the Secretary). The military judge and members of courts-martial may not suspend sentences.

Rule 1301. Summary courts-martial generally

(c) *Jurisdiction.* Subject to Chapter II, summary courts-martial have the power to try persons subject to the code, except commissioned officers, warrant officers, cadets, aviation cadets, and midshipmen, for any noncapital offense made punishable by the code.

Discussion

See R.C.M. 103(3) for a definition of capital offenses.''

Sec. 10. A new appendix, Appendix 30 is inserted and reads as follows:

''Appendix 30

Rules for Courts-Martial 405 Applicable to Offenses Committed Before 26 December 2014

Rule for Courts-Martial 405 in this appendix was revised to implement Section 1702 of the National Defense Authorization Act for Fiscal Year 2014, Public Law 113–66, 26 December 2013.'' For offenses committed before 26 December 2014, the relevant R.C.M. 405 is contained in this appendix and listed below:

Rule 405. Pretrial investigation

(a) *In general.* Except as provided in subsection (k) of this rule, no charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made in substantial compliance with this rule. Failure to comply with this rule shall have no effect if the charges are not referred to a general court-martial.

Discussion

The primary purpose of the investigation required by Article 32 and this rule is to inquire into the truth of the matters set forth in the charges, the form of the charges, and to secure information on which to determine what disposition should be made of the case. The investigation also serves as a means of discovery. The function of the investigation is to ascertain and impartially weigh all available facts in arriving at conclusions and recommendations, not to perfect a case against the accused. The investigation should be limited to the issues raised by the charges and necessary to proper disposition of the case. The investigation is not limited to examination of the witnesses and evidence mentioned in the accompanying allied papers. *See* subsection (e) of this rule. Recommendations of the investigating officer are advisory.

If at any time after an investigation under this rule the charges are changed to allege a more serious or essentially different offense, further investigation should be directed with respect to the new or different matters alleged.

Failure to comply substantially with the requirements of Article 32, which failure prejudices the accused, may result in delay in disposition of the case or disapproval of the proceedings. *See* R.C.M. 905(b)(1) and 906(b)(3) concerning motions for appropriate relief relating to the pretrial investigation.

The accused may waive the pretrial investigation. *See* subsection (k) of this rule. In such case, no investigation need be held. The commander authorized to direct the investigation may direct that it be conducted notwithstanding the waiver.

(b) *Earlier investigation.* If an investigation of the subject matter of an offense has been conducted before the accused is charged with an offense, and the accused was present at the investigation and afforded the rights to counsel, cross-examination, and presentation of evidence required by this rule, no further investigation is required unless demanded by the accused to recall witnesses for further cross-examination and to offer new evidence.

Discussion

An earlier investigation includes courts of inquiry and similar investigations which meet the requirements of this subsection.

(c) *Who may direct investigation.* Unless prohibited by regulations of the Secretary concerned, an investigation may be directed under this rule by any court-martial convening authority. That authority may also give procedural instructions not inconsistent with these rules.

(d) *Personnel.*

(1) *Investigating officer.* The commander directing an investigation under this rule shall detail a commissioned officer not the accuser, as investigating officer, who shall conduct the investigation and make a report of conclusions and recommendations. The investigating officer is disqualified to act later in the same case in any other capacity.

Discussion

The investigating officer should be an officer in the grade of major or lieutenant commander or higher or one with legal training. The investigating officer may seek legal advice concerning the investigating officer's responsibilities from an impartial source, but may not obtain such advice from counsel for any party.

(2) *Defense counsel.*

(A) *Detailed counsel.* Except as provided in subsection (d)(2)(B) of this rule, military counsel certified in accordance with Article 27(b) shall be detailed to represent the accused.

(B) *Individual military counsel.* The accused may request to be represented by individual military counsel. Such requests shall be acted on in accordance with R.C.M. 506(b). When the accused is represented by individual military counsel, counsel detailed to represent the accused shall ordinarily be excused, unless the authority who detailed the defense counsel, as a matter of discretion, approves a request by the accused for retention of detailed counsel. The investigating officer shall forward any request by the accused for individual military counsel to the commander who directed the investigation. That commander shall follow the procedures in R.C.M. 506(b).

(C) *Civilian counsel.* The accused may be represented by civilian counsel at no expense to the United States. Upon request, the accused is entitled to a reasonable time to obtain civilian counsel and to have such counsel present for the investigation. However, the investigation shall not be unduly delayed for this purpose. Representation by civilian counsel shall not limit the rights to military counsel under subsections (d)(2)(A) and (B) of this rule.

Discussion

See R.C.M. 502(d)(6) concerning the duties of defense counsel.

(3) *Others.* The commander who directed the investigation may also, as a matter of discretion, detail or request an appropriate authority to detail:

(A) Counsel to represent the United States;

(B) A reporter; and

(C) An interpreter.

(e) *Scope of investigation.* The investigating officer shall inquire into the truth and form of the charges, and such other matters as may be necessary to make a recommendation as to the disposition of the charges. If evidence adduced during the investigation indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of such offense and make a recommendation as to its disposition, without the accused first having been charged with the offense. The accused's rights under subsection (f) are the same with regard to investigation of both charged and uncharged offenses.

Discussion

The investigation may properly include such inquiry into issues raised directly by the charges as is necessary to make an appropriate recommendation. For example, inquiry into the legality of a search or the

admissibility of a confession may be appropriate. However, the investigating officer is not required to rule on the admissibility of evidence and need not consider such matters except as the investigating officer deems necessary to an informed recommendation. When the investigating officer is aware that evidence may not be admissible, this should be noted in the report. *See also* subsection (i) of this rule.

In investigating uncharged misconduct identified during the pretrial investigation, the investigating officer will inform the accused of the general nature of each uncharged offense investigated, and otherwise afford the accused the same opportunity for representation, cross examination, and presentation afforded during the investigation of any charged offense.

(f) *Rights of the accused.* At any pretrial investigation under this rule the accused shall have the right to:

(1) Be informed of the charges under investigation;

(2) Be informed of the identity of the accuser;

(3) Except in circumstances described in R.C.M. 804(c)(2), be present throughout the taking of evidence;

(4) Be represented by counsel;

(5) Be informed of the witnesses and other evidence then known to the investigating officer;

(6) Be informed of the purpose of the investigation;

(7) Be informed of the right against self-incrimination under Article 31;

(8) Cross-examine witnesses who are produced under subsection (g) of this rule;

(9) Have witnesses produced as provided for in subsection (g) of this rule;

(10) Have evidence, including documents or physical evidence, within the control of military authorities produced as provided under subsection (g) of this rule;

(11) Present anything in defense, extenuation, or mitigation for consideration by the investigating officer; and

(12) Make a statement in any form.

(g) *Production of witnesses and evidence; alternatives.*

(1) *In general.*

(A) *Witnesses.* Except as provided in subsection (g)(4)(A) of this rule, any witness whose testimony would be relevant to the investigation and not cumulative, shall be produced if reasonably available. This includes witnesses requested by the accused, if the request is timely. A witness is ''reasonably available'' when the witness is located within 100 miles of the situs of the investigation and the significance of the testimony and personal appearance of the witness outweighs the difficulty, expense, delay, and effect on military operations of obtaining the witness' appearance. A witness who is unavailable under Mil. R. Evid. 804(a)(1)–(6), is not ''reasonably available.''

Discussion

A witness located beyond the 100-mile limit is not *per se* unavailable. To determine if a witness beyond 100 miles is reasonably available, the significance of the witness' live testimony must be balanced against the relative difficulty and expense of obtaining the witness' presence at the hearing.

(B) *Evidence.* Subject to Mil. R. Evid., Section V, evidence, including documents or physical evidence, which is under the control of the Government and which is relevant to the investigation and not cumulative, shall be produced if reasonably available. Such evidence includes evidence requested by the accused, if the request is timely. As soon as practicable after receipt of a request by the accused for information which may be protected under Mil. R. Evid. 505 or 506, the investigating officer shall notify the person who is authorized to issue a protective order under subsection (g)(6) of this rule, and the convening authority, if different. Evidence is reasonably available if its significance outweighs the difficulty, expense, delay, and effect on military operations of obtaining the evidence.

Discussion

In preparing for the investigation, the investigating officer should consider what evidence will be necessary to prepare a thorough and impartial investigation. The investigating officer should consider, as to potential witnesses, whether their personal appearance will be necessary. Generally, personal appearance is preferred, but the investigating officer should consider whether, in light of the probable importance of a witness' testimony, an alternative to testimony under subsection (g)(4)(A) of this rule would be sufficient.

After making a preliminary determination of what witnesses will be produced and other evidence considered, the investigating officer should notify the defense and inquire whether it requests the production of other witnesses or evidence. In addition to witnesses for the defense, the defense may request production of witnesses whose testimony would favor the prosecution.

Once it is determined what witnesses the investigating officer intends to call it must be determined whether each witness is reasonably available. That determination is a balancing test. The more important the testimony of the witness, the greater the difficulty, expense, delay, or effect on military operations must be to permit nonproduction. For example, the temporary absence of a witness on leave for 10 days would normally justify using an alternative to that witness' personal appearance if the sole reason for the witness' testimony was to impeach the credibility of another witness by reputation evidence, or to establish a mitigating character trait of the accused. On the other hand, if the same witness was the only eyewitness to the offense, personal appearance would be required if the defense requested it and the witness is otherwise reasonably available. The time and place of the investigation may be changed if reasonably necessary to permit the appearance of a witness. Similar considerations apply to the production of evidence.

If the production of witnesses or evidence would entail substantial costs or delay, the investigating officer should inform the commander who directed the investigation.

The provision in (B), requiring the investigating officer to notify the appropriate authorities of requests by the accused for information privileged under Mil. R. Evid. 505 or 506, is for the purpose of placing the appropriate authority on notice that an order, as authorized under subparagraph (g)(6), may be required to protect whatever information the government may decide to release to the accused.

(2) *Determination of reasonable availability.*

(A) *Military witnesses.* The investigating officer shall make an initial determination whether a military witness is reasonably available. If the investigating officer decides that the witness is not reasonably available, the investigating officer shall inform the parties. Otherwise, the immediate commander of the witness shall be requested to make the witness available. A determination by the immediate commander that the witness is not reasonably available is not subject to appeal by the accused but may be reviewed by the military judge under R.C.M. 906(b)(3).

Discussion

The investigating officer may discuss factors affecting reasonable availability with the immediate commander of the requested witness and with others. If the immediate commander determined that the witness is not reasonably available, the reasons for that determination should be provided to the investigating officer.

(B) *Civilian witnesses.* The investigating officer shall decide whether a civilian witness is reasonably available to appear as a witness.

Discussion

The investigating officer should initially determine whether a civilian witness is reasonably available without regard to whether the witness is willing to appear. If the investigating officer determines that a civilian witness is apparently reasonably available, the witness should be invited to attend and when appropriate, informed that necessary expenses will be paid.

If the witness refuses to testify, the witness is not reasonably available because civilian witnesses may not be compelled to attend a pretrial investigation. Under subsection (g)(3) of this rule, civilian witnesses may be paid for travel and associated expenses to testify at a pretrial investigation. Except for use in support of the deposition of a witness under Article 49, UCMJ, and ordered pursuant to R.C.M. 702(b), the investigating officer and any government representative to an Article 32, UCMJ, proceeding does not possess authority to issue a subpoena to compel against his or her will a civilian witness to appear and provide testimony or documents.

(C) *Evidence.* The investigating officer shall make an initial determination whether evidence is reasonably available. If the investigating officer decides that it is not reasonably available, the investigating officer shall inform the parties. Otherwise, the custodian of the evidence shall be requested to provide the evidence. A determination by the custodian that the evidence is not reasonably available is not subject to appeal

by the accused, but may be reviewed by the military judge under R.C.M. 906(b)(3).

Discussion

The investigating officer may discuss factors affecting reasonable availability with the custodian and with others. If the custodian determines that the evidence is not reasonably available, the reasons for that determination should be provided to the investigating officer.

(D) *Action when witness or evidence is not reasonably available.* If the defense objects to a determination that a witness or evidence is not reasonably available, the investigating officer shall include a statement of the reasons for the determination in the report of investigation.

(3) *Witness expenses.* Transportation expenses and a per diem allowance may be paid to civilians requested to testify in connection with an investigation under this rule according to regulations prescribed by the Secretary of a Department.

Discussion

See Department of Defense Joint Travel Regulations, Vol 2, paragraphs C3054, C6000.

(4) *Alternatives to testimony.*

(A) Unless the defense objects, an investigating officer may consider, regardless of the availability of the witness:

(i) Sworn statements;

(ii) Statements under oath taken by telephone, radio, or similar means providing each party the opportunity to question the witness under circumstances by which the investigating officer may reasonably conclude that the witness' identity is as claimed;

(iii) Prior testimony under oath;

(iv) Depositions;

(v) Stipulations of fact or expected testimony;

(vi) Unsworn statements; and

(vii) Offers of proof of expected testimony of that witness.

(B) The investigating officer may consider, over objection of the defense, when the witness is not reasonably available:

(i) Sworn statements;

(ii) Statements under oath taken by telephone, radio, or similar means providing each party the opportunity to question the witness under circumstances by which the investigating officer may reasonably conclude that the witness' identity is a claimed;

(iii) Prior testimony under oath; and

(iv) Deposition of that witness; and

(v) In time of war, unsworn statements.

(5) *Alternatives to evidence.*

(A) Unless the defense objects, an investigating officer may consider, regardless of the availability of the evidence:

(i) Testimony describing the evidence;

(ii) An authenticated copy, photograph, or reproduction of similar accuracy of the evidence;

(iii) An alternative to testimony, when permitted under subsection (g)(4)(B) of this rule, in which the evidence is described;

(iv) A stipulation of fact, document's contents, or expected testimony;

(v) An unsworn statement describing the evidence; or

(vi) An offer of proof concerning pertinent characteristics of the evidence.

(B) The investigating officer may consider, over objection of the defense, when the evidence is not reasonably available:

(i) Testimony describing the evidence;

(ii) An authenticated copy, photograph, or reproduction of similar accuracy of the evidence; or

(iii) An alternative to testimony, when permitted under subsection (g)(4)(B) of this rule, in which the evidence is described.

(6) *Protective order for release of privileged information.* If, prior to referral, the Government agrees to disclose to the accused information to which the protections afforded by Mil. R. Evid. 505 or 506 may apply, the convening authority, or other person designated by regulation of the Secretary of the service concerned, may enter an appropriate protective order, in writing, to guard against the compromise of information disclosed to the accused. The terms of any such protective order may include prohibiting the disclosure of the information except as authorized by the authority issuing the protective order, as well as those terms specified by Mil. R. Evid. 505(g)(1)(B) through (F) or 506(g)(2) through (5).

(h) *Procedure.*

(1) *Presentation of evidence.*

(A) *Testimony.* All testimony shall be taken under oath, except that the accused may make an unsworn statement. The defense shall be given wide latitude in cross-examining witnesses.

Discussion

The following oath may be given to witnesses:

''Do you (swear) (affirm) that the evidence you give shall be the truth, the whole truth, and nothing but the truth (so help you God)?''

The investigating officer is required to include in the report of the investigation a summary of the substance of all testimony. *See* subsection (j)(2)(B) of this rule. After the hearing, the investigating officer should, whenever possible, reduce the substance of the testimony of each witness to writing.

If the accused testifies, the investigating officer may invite but not require the accused to swear to the truth of a summary of that testimony. If substantially verbatim notes of a testimony or recordings of testimony were taken during the investigation, they should be preserved until the end of trial.

If it appears that material witnesses for either side will not be available at the time anticipated for trial, the investigating officer should notify the commander who directed the investigation so that depositions may be taken if necessary.

If during the investigation any witness subject to the code is suspected of an offense under the code, the investigating officer should comply with the warning requirements of Mil. R. Evid.305(c), (d), and, if necessary, (e).

(B) *Other evidence.* The investigating officer shall inform the parties what other evidence will be considered. The parties shall be permitted to examine all other evidence considered by the investigating officer.

(C) *Defense evidence.* The defense shall have full opportunity to present any matters in defense, extenuation, or mitigation.

(2) *Objections.* Any objection alleging failure to comply with this rule, except subsection (j), shall be made to the investigating officer promptly upon discovery of the alleged error. The investigating officer shall not be required to rule on any objection. An objection shall be noted in the report of investigation if a party so requests. The investigating officer may require a party to file any objection in writing.

Discussion

See also subsection (k) of this rule.

Although the investigating officer is not required to rule on objections, the investigating officer may take corrective action in response to an objection as to matters relating to the conduct of the proceedings when the investigating officer believes such action is appropriate.

If an objection raises a substantial question about a matter within the authority of the commander who directed the investigation (for example, whether the investigating officer was properly appointed) the investigating officer should promptly inform the commander who directed the investigation.

(3) *Access by spectators.* Access by spectators to all or part of the proceedings may be restricted or foreclosed in the discretion of the commander who directed the investigation or the investigating officer. Article 32 investigations are public hearings and should remain open to the public whenever possible. When an overriding interest exists that outweighs the value of an open investigation, the hearing may be closed to spectators. Any closure must be narrowly tailored to achieve the overriding interest that justified the closure. Commanders or investigating officers must conclude that no lesser methods short of closing the Article 32 investigation can be used to protect the overriding interest in the case. Commanders or investigating officers must conduct a case-by-case, witness-by-witness, circumstance-by-circumstance analysis of whether closure is necessary. If a commander or investigating officer believes closing the Article 32 investigation is necessary, the commander or investigating officer must make specific findings of fact in writing that support the closure. The written findings of fact must be included in the Article 32 investigating officer's report. Examples of overriding interests may include: preventing psychological harm or trauma to a child witness or an alleged victim of a sexual crime, protecting the safety of a witness or alleged victim, protecting classified material, and receiving evidence where a witness is incapable of testifying in an open setting.

(4) *Presence of accused.* The further progress of the taking of evidence shall not be prevented and the accused shall be considered to have waived the right to be present, whenever the accused:

(A) After being notified of the time and place of the proceeding is voluntarily absent (whether or not informed by the investigating officer of the obligation to be present); or

(B) After being warned by the investigating officer that disruptive conduct will cause removal from the proceeding, persists in conduct which is such as to justify exclusion from the proceeding.

(i) *Military Rules of Evidence.* The Military Rules of Evidence—other than Mil. R. Evid. 301, 302, 303, 305, 412 and Section V—shall not apply in pretrial investigations under this rule.

Discussion

The investigating officer should exercise reasonable control over the scope of the inquiry. *See* subsection (e) of this rule. An investigating officer may consider any evidence, even if that evidence would not be admissible at trial. However, *see* subsection (g)(4) of this rule as to limitations on the ways in which testimony may be presented.

Certain rules relating to the form of testimony which may be considered by the investigating officer appear in subsection (g) of this rule.

(j) *Report of investigation.*

(1) *In general.* The investigating officer shall make a timely written report of the investigation to the commander who directed the investigation.

Discussion

If practicable, the charges and the report of investigation should be forwarded to the general court-martial convening authority within 8 days after an accused is ordered into arrest or confinement. Article 33.

(2) *Contents.* The report of investigation shall include:

(A) A statement of names and organizations or addresses of defense counsel and whether defense counsel was present throughout the taking of evidence, or if not present the reason why;

(B) The substance of the testimony taken on both sides, including any stipulated testimony;

(C) Any other statements, documents, or matters considered by the investigating officer, or recitals of the substance or nature of such evidence;

(D) A statement of any reasonable grounds for belief that the accused was not mentally responsible for the offense or was not competent to participate in the defense during the investigation;

Discussion

See R.C.M. 909 (mental capacity); 916(k) (mental responsibility).

(E) A statement whether the essential witnesses will be available at the time anticipated for trial and the reasons why any essential witness may not then be available;

(F) An explanation of any delays in the investigation;

(G) The investigating officer's conclusion whether the charges and specifications are in proper form;

(H) The investigating officer's conclusion whether reasonable grounds exist to believe that the accused committed the offenses alleged; and

(I) The recommendations of the investigating officer, including disposition.

Discussion

For example, the investigating officer may recommend that the charges and specifications be amended or that additional charges be preferred. *See* R.C.M. 306 and 401 concerning other possible dispositions.

See Appendix 5 for a sample of the Investigating Officer's Report (DD Form 457).

(3) *Distribution of the report.* The investigating officer shall cause the report to be delivered to the commander who directed the investigation. That commander shall promptly cause a copy of the report to be delivered to each accused.

(4) *Objections.* Any objection to the report shall be made to the commander who directed the investigation within 5 days of its receipt by the accused. This subsection does not prohibit a convening authority from referring the charges or taking other action within the 5-day period.

(k) *Waiver.* The accused may waive an investigation under this rule. In addition, failure to make a timely objection under this rule, including an objection to the report, shall constitute waiver of the objection. Relief from the waiver may be granted by the investigating officer, the commander who directed the investigation, the convening authority, or the military judge, as appropriate, for good cause shown.

Discussion

See also R.C.M. 905(b)(1); 906(b)(3).

If the report fails to include reference to objections which were made under subsection (h)(2) of this rule, failure to object to the report will constitute waiver of such objections in the absence of good cause for relief from the waiver.

The commander who receives an objection may direct that the investigation be reopened or take other action, as appropriate.

Even if the accused made a timely objection to failure to produce a witness, a defense request for a deposition may be necessary to preserve the issue for later review.''

Dated: September 29, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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Part IV

Consumer Product Safety Commission

16 CFR Part 1240
Final Rule: Safety Standard for Magnet Sets; Final Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1240

[CPSC Docket No. CPSC–2012–0050]

Final Rule: Safety Standard for Magnet Sets

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission (CPSC, Commission, or we) is issuing a rule establishing requirements for magnet sets and individual magnets that are intended or marketed to be used with or as magnet sets. As defined in the rule, magnet sets are aggregations of separable magnetic objects that are marketed or commonly used as a manipulative or construction item for entertainment, such as puzzle working, sculpture building, mental stimulation, or stress relief. Under the rule, if a magnet set contains a magnet that fits within the CPSC's small parts cylinder, each magnet in the magnet set must have a flux index of 50 kG^2 mm^2 or less. An individual magnet that is marketed or intended for use as part of a magnet set also must meet these requirements. The flux index is determined by the method described in ASTM F963–11, Standard Consumer Safety Specification for Toy Safety.

DATES: This rule will become effective on April 1, 2015. The incorporation by reference of the publication listed in this rule is approved by the Director of the **Federal Register** as of April 1, 2015.

FOR FURTHER INFORMATION CONTACT: Thomas Lee, Compliance Officer, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7737, or email: *tlee@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The Commission is issuing a safety standard under the Consumer Product Safety Act (CPSA) establishing requirements for magnet sets that have been associated with serious injuries and one reported death.[1] As discussed in greater detail in section B of this preamble, magnet sets are sets of small, powerful magnets marketed for general entertainment as construction toys, desk toys, sculpture sets, or stress relievers. The rule also covers individual magnets that are marketed or intended for use with or as magnet sets. The Commission concludes that this rule is necessary to address an unreasonable risk of injury and death associated with these magnet sets.

1. Initial Incident Reports to CPSC and CPSC's Response

Significant U.S. sales of magnet sets marketed for general entertainment began in 2009. CPSC staff received the first consumer incident report involving magnet sets in February 2010. No injury resulted from this incident. Shortly after receiving this report, CPSC staff collected and evaluated samples of the magnet sets.

In December 2010, we received our first consumer incident report involving the surgical removal of magnets that had been part of a magnet set. During 2011, CPSC staff collected magnet sets marketed to children under 13 years old, and staff evaluated the compliance of these products with ASTM F963–11, *Standard Consumer Safety Specification for Toy Safety.* Staff evaluated these products under ASTM F–963 because some of the products were labeled and marketed in a manner that appeared to promote use by children and this standard includes requirements for the strength and size of magnets that are part of a toy intended for children. For firms whose products did not have labeling or marketing information, CPSC staff encouraged those firms to develop marketing programs and labeling content to help ensure that these magnet sets were not marketed to children. In addition, CPSC staff issued Notices of Noncompliance to firms that marketed magnet sets to children younger than 14 years of age.

In November 2011, in response to continuing reports of injuries associated with the products, the CPSC, in cooperation with two manufacturers, launched a public awareness campaign, which included a video public service announcement (PSA). The PSA advised children: Not to put magnets from magnet sets into their mouth; described the risk of injury presented by the ingestion of high-powered magnets; and provided tips to avoid magnet ingestion injuries, along with guidance for children who had swallowed magnets and parents who suspect that their child has swallowed magnets. Despite the CPSC's compliance and public awareness activities, reported incidents of magnet ingestion by children increased from 13 in 2010, to 19 in 2011, and 52 in 2012. Likely due to CPSC enforcement and regulatory activity beginning in mid-2012, and because the largest distributor ceased operations at the end of 2012, reported incidents declined to 13 incidents in 2013, including one fatality, and two incidents in 2014. We received an additional magnet ingestion incident report for which there was insufficient information to determine the date of the incident. As of June 24, 2014, 100 ingestion incidents involving, or possibly involving, ingestion of magnets from magnet sets have been reported to CPSC. (As discussed in section C of this preamble, staff's analysis of incidents reported through the National Electronic Injury Surveillance System (NEISS) estimates that 2,900 possible magnet set, emergency department-treated ingestions occurred in the United States from January 1, 2009 through December 31, 2013).

2. Corrective Actions

In May 2012, Compliance staff contacted a total of 13 independent importers of magnet sets and asked these importers to provide reports required under Section 15 of the CPSA. Most of the firms agreed to stop selling the products pending the results of staff's evaluation of the products. Given the continued injuries to children, staff negotiated voluntary corrective action plans with 11 of the 13 magnet set importers. These firms agreed to cease importation, distribution, and sales of magnet sets. Two importers did not agree to stop selling the magnets and the Commission initiated an administrative action in July and August 2012 seeking a determination that the magnet sets present a substantial product hazard and an order that the firm cease importation and distribution of the products. The Commission initiated a third administrative action in December 2012 after one of the firms that had agreed to stop sale subsequently resumed selling magnet sets. Two of the three administrative actions have been resolved. In May 2014, the Commission settled the administrative action against Maxfield & Oberton Holdings, LLC, and Craig Zucker, individually, and as an officer of Maxfield & Oberton Holdings, LLC. The settlement established and funded a Recall Trust, which, in accordance with a corrective action plan (CAP), is recalling the firm's magnet sets. In July 2014, the Commission settled the administrative complaint against Star Networks USA, LLC (Star). Under that settlement, Star has agreed to implement a CAP providing for the recall of the firm's magnet sets. The third firm, Zen Magnets, LLC, remains the subject of a CPSC administrative

[1] The Commission voted 4–0–1 to publish this notice in the **Federal Register**. Chairman Elliot F. Kaye, Commissioner Robert S. Adler, Commissioner Marietta S. Robinson and Commissioner Joseph P. Mohorovic voted to approve publication of the final rule. Commissioner Ann Marie Buerkle abstained from the matter.

action and continues to market and sell magnet sets.

3. Notice of Proposed Rulemaking

In the **Federal Register** of September 4, 2012 (77 FR 53781), the Commission published a notice of proposed rulemaking (NPR) to address the unreasonable risk of injury associated with magnet sets. The NPR proposed a standard that would require magnets from magnet sets containing at least one magnet that fits within the CPSC's small parts cylinder to have a flux index of 50 kG^2 mm^2 or less. The proposed rule sought comment on whether the rule should include magnets sold individually that could be aggregated into a magnet set. The final rule modifies the proposal to include individual magnets marketed or intended for the same uses as a magnet set, *i.e.,* as a manipulative or construction item for entertainment, such as puzzle working, sculpture building, mental stimulation, or stress relief. We discuss this modification and other differences between the proposed and final rule in Section F of this preamble. The information discussed in this preamble comes from CPSC staff's briefing packages for the proposed and final magnet set rule, which are available on the CPSC's Web site at: *http://www.cpsc.gov/PageFiles/128934/magnetstd.pdf* (NPR briefing package) and *http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2014/SafetyStandardforMagnetSets-FinalRule.pdf* (final rule briefing package).

B. The Product

1. Description of the Product

The magnet sets covered by this rule typically are comprised of numerous identical, spherical, or cube-shaped magnets, approximately 3 millimeters to 6 millimeters in size, with the majority made from NdFeB (Neodymium-Iron-Boron or NIB). As discussed in section F of this preamble, the rule also covers individual magnets that are marketed or intended for use with or as magnet sets. These magnets exhibit strong magnetic properties. The magnetized neodymium-iron-boron cores are coated with a variety of metals and other materials to make them more attractive to consumers and to protect the brittle magnetic alloy materials from breaking, chipping, and corroding.

The magnets that are part of magnet sets are often referred to as ''magnet balls'' or ''rare earth magnets.'' Magnet sets are and have been marketed as: adult desk toys, the ''puzzles of the future,'' stress relievers, science kits, and educational tools for ''brain development.'' As shown in product instructions and in videos on related Web sites, magnet sets can be used and reused to make various two- and three-dimensional sculptures and figures, jewelry, and toys, such as spinning tops. Videos also show how these magnets can be used to mimic mouth and tongue piercings.

Magnet sets come with varying numbers of magnets, from as few as 27 magnets, to more than 1,000. Most of the magnets have been sold in sets of 125 balls or sets of 216 to 224 balls. The one firm that is currently marketing magnet sets that would not meet this rule sells one or more balls individually. Based on product information provided by marketers, the most common magnet size is approximately 5 millimeters in diameter, although balls as small as about 3 millimeters have been sold, as have sets of larger magnet balls (perhaps 15 millimeters to 25 millimeters in diameter). In addition to magnetic ball sets, magnet sets comprised of small magnetic cubes have also been sold, as have small magnetic rods. Sets made up of rods, however, have comprised a relatively small share of the market.

Most magnet sets contain magnets that are glossy and highly reflective with the spheres often described as similar in appearance to BBs or ball bearings. Magnet set magnets come in a variety of colors, including silver, blue, yellow, green and orange. The products are packaged in a variety of ways, including fabric pouches, wooden boxes, and metal tins.

The rule defines ''magnet set'' as: ''any aggregation of separable magnetic objects that is a consumer product intended, marketed or commonly used as a manipulative or construction item for general entertainment, such as puzzle working, sculpture, mental stimulation, or stress relief.'' As discussed in section F of this preamble, the rule also covers individual magnets marketed or intended for use with magnet sets.

2. Use of the Product

For the NPR, CPSC's Human Factors staff provided an assessment that discusses the appeal and use of magnet sets. Magnet sets have some appeal for virtually all age groups. These types of magnets tend to capture attention because they are shiny and reflect light. They are smooth, which gives the magnets tactile appeal, and these magnets make soft snapping sounds as they are manipulated. These properties or characteristics of magnets are likely to seem magical to younger children and may evoke a degree of awe and amusement among older children and teens. These features are the foundation of the magnet sets' appeal as a challenging puzzle, or as a manipulative, or as jewelry. These magnets may also be used like a stress ball and as a way to hold things in place.

Children, from toddlers through teens, have been exposed to magnet sets in the home setting and elsewhere. As the NPR preamble notes, we have reports of ingestion incidents that involve children 5 years of age and younger. The reports reflect similar scenarios to other ingestion incidents among this age group because mouthing and ingesting non-food items is a normal part of preschool children's exploratory behavior. In a number of reported incidents, the magnets were not in their original containers, and caregivers were unaware that some of the magnets from the set were missing and in the child's possession.

As noted in the NPR preamble, magnet sets also appeal to children of early-to-middle elementary school age. Younger children in this age group are interested in simple three-dimensional puzzles, and older elementary school children are interested in highly complex puzzles. Children in the latter age group also can engage in activities that require the type of meticulous work and attention that would be needed to create the complex patterns and structures found on paper and in video instructions for magnet sets. Additionally, magnets typically are included in science curricula for elementary school children to demonstrate the basic concepts of magnetism.

For all of these reasons, and consistent with reviews on retail Web sites, magnet sets are sometimes purchased for children under the age of 14, despite warnings or labeling to the contrary. For example, approximately one-third of 53 adults reviewing one manufacturer's product on Amazon.com reported purchasing the magnets for children 8 through 11 years of age.

Thus, it is foreseeable that some portion of these products will be purchased for elementary school children and teens. Moreover, given the relatively low cost for some magnet sets, elementary school children and teens may purchase the magnet sets themselves. The incident reports reflect behaviors that are beyond the intended use of the product but that are foreseeable for the groups using them. For example, it is foreseeable that some children will place these magnets in their mouth, even if the manufacturer

warns against this behavior. The mouthing of objects, common among younger children, develops into less obvious and more socially acceptable oral habits, which may continue through childhood and adolescence and into adulthood (*e.g.,* mouthing or chewing a fingertip, fingernail, knuckle, pen, pencil, or other object, especially while concentrating or worrying). Where details are provided, the incident reports describe scenarios that are consistent with the behaviors of young children and teens. Although exploratory play is generally associated with very young children, people of all ages use their senses to explore unfamiliar phenomena. 77 FR 53781, 53783 (Sep. 4, 2012).

3. The Market

Based on information reviewed by staff on product sales, including reports by firms provided to the Office of Compliance and Field Operations, the number of magnet sets that were sold to U.S. consumers from 2009 through mid-2012, may have totaled about 2.7 million sets, with a value of roughly $50 million. This estimate reflects retail sales directly to consumers (through company Web sites and other Internet retail sites) and sales to retailers who market the products. Staff's review of retail prices reported by importers, and observed on Internet sites in 2012, suggested prices of magnets sets typically ranging from about $20 to $45 per set, with an average price of about $25.

To our knowledge, all of the firms that have marketed the products, including the firm that continues to sell individual magnets and magnet sets, import the products packaged and labeled for sale to U.S. consumers. Several Chinese manufacturers have the facilities and production capacity to meet the orders of U.S. importers. Additionally, there are no major barriers to market entry for firms wishing to source products from China for sale in the United States. Firms may have sales arrangements with Internet retailers who hold stock for them and process orders.

We have identified about 25 U.S. firms and individuals who imported magnet sets for sale in the United States in 2012. The combined sales of the top seven firms probably have accounted for the great majority (perhaps more than 90%) of units sold. One firm, Maxfield & Oberton Holdings, LLC, believed to have held a dominant position in the market for magnetic desk sets since the firm entered the market in 2009, ceased operating in December 2012, and is no longer an importer of magnet sets. That now-defunct firm, along with a few larger firms (including a firm based in Canada with a branch office in the United States), marketed their products through accounts with retailers. They have also sold their products directly to consumers via the Internet, using their own Web sites, or other Internet shopping sites. In addition to products offered for sale by U.S. importers, consumers also have the ability to purchase magnetic sets directly from sources in Hong Kong or China that market products through a leading Internet shopping site.

C. Risk of Injury

The risk of injury addressed by this rule is damage to intestinal tissue caused when a person ingests more than one magnet from a magnet set (or one magnet and a ferromagnetic object). The magnets are attracted to each other in the digestive system, damaging the intestinal tissue that becomes trapped between the magnets. In rare cases, there can be interaction between magnets in the airways and digestive tract (esophagus). These injuries can be difficult to diagnose and treat because the symptoms of magnet ingestion often appear similar to those of less serious conditions, such as the flu, and because many doctors are unfamiliar with the risks of magnet ingestion. In addition, the limitations of standard diagnostic tools to identify and evaluate the presence of magnets in the body may make magnet ingestion difficult to identify. Serious injury and even death are consequences of ingestion of strong magnets by children.

1. Incident Data

NEISS data. CPSC staff reviewed data from the NEISS database of magnet-related ingestion cases treated in emergency departments from January 1, 2009 to December 31, 2013.[2] CPSC staff analyzed 456 magnet-related ingestion cases and determined that 121 of the cases involved or possibly involved ingestion of magnets from magnet sets. Staff further determined that an estimated 2,900 ingestions of magnets from magnet sets were treated in U.S. emergency departments during this 5-year period—an estimated average of 580 emergency department-treated magnet ingestions per year. The largest portion of these incidents involved children 4 through 12 years of age. An estimated 1,900 of the 2,900 victims are in the 4- through 12-year-old age group (65.3 percent). For more information about the process of developing the estimates of incidents, see the memorandum from the Directorate for Epidemiology, located at Tab B of staff's briefing package: *http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2014/SafetyStandardforMagnetSets-FinalRule.pdf.*

Databases other than NEISS. The preamble to the proposed rule (77 FR at 53784 through 53785) summarized the data for incidents reported through databases other than NEISS from January 1, 2009 through June 30, 2012. These incidents involved the ingestion of magnets by children between the ages of 1 and 15. For that period, we received reports of 50 incidents involving the ingestion of magnets by children in this age range. Of those 50 incidents, 38 involved the ingestion of high-powered, ball-shaped magnets contained in products that meet the definition above of ''magnet set''; five of the 50 incidents possibly involved ingestion of this type of magnet. In 35 of the 43 incidents involving or possibly involving magnets from a magnet set, two or more magnets were ingested. Hospitalization was required in 29 of the 43 incidents, with surgery necessary to remove the magnets in 20 of the 29 hospitalizations. In the other nine hospitalizations, the victim underwent colonoscopic or endoscopic procedures to remove the magnets. In 37 of the 43 incidents, the magnets were ingested by children younger than 4 years old or between the ages of 4 and 12 years.

Since publication of the NPR, the Commission has received reports of additional incidents involving the ingestion of magnets by children between the ages of 1 year and 15 years old, including one report of a fatality associated with the ingestion of small spherical magnets. We have now received reports of a total of 100 incidents involving or possibly involving the ingestion of high-powered, ball-shaped magnets contained in products that meet the definition of ''magnet set.'' The reports indicate that the incidents occurred between January 1, 2009 and June 24, 2014. Sixty-one of the 100 reported incidents required hospitalization. In 87 of the 100 reported incidents, the magnets were ingested by children younger than 4 years old or between the ages of 4 and 12 years.

Among the 100 reported incidents is one fatality that involved magnets from a magnet set. In August 2013, a 19-

[2] The Commission collects information on hospital emergency room-treated injuries through the NEISS database. This data can be used to provide national estimates of product-related injuries treated in U.S. hospital emergency departments. Incidents reported to the Commission represent a minimum count of injuries. To account for incidents that are not reported to the Commission, the staff calculates an estimated number of such injuries.

month-old female died from ischemic bowel caused by magnets from magnet sets in her small intestine.

2. Hazard Scenarios

As discussed in the preamble to the proposed rule, the incident reports describe scenarios that are consistent with behaviors of children in the identified age ranges. As noted in the NPR, mouthing of objects, which is common among younger children, develops into less obvious and more socially acceptable oral habits, which may continue through childhood and adolescence and into adulthood (*e.g.,* mouthing or chewing a fingertip, fingernail, knuckle, pen, pencil, or other object, especially while concentrating or worrying). 77 FR 53781, 53783 (Sep. 4, 2012). For example, in the incidents reported in the 8 through 12-year-old age group, one child described wanting to feel the force of the magnets through his tongue; one was trying to see if the magnets would stick to her braces; and another wanted to see if the magnets would stick together through her teeth. In another common scenario that accounted for half of the reported ingestion incidents among 8 to 15 year olds, children used multiple magnets to simulate piercings of their tongue, lips, or cheeks. In incidents reported among children under the age of 4 years, children put the magnets in their mouths and either intentionally or accidentally swallowed them.

The preamble to the proposed rule provides summaries of several incident reports that demonstrate a few of the reported hazard scenarios (77 FR at 53785 to 53786). These scenarios include two incidents in which young girls (10 and 13 years of age) swallowed multiple magnet balls while using the magnets to simulate tongue and lip piercings. The girls underwent surgical procedures to remove magnet balls from their intestines. In three other scenarios, magnet balls ingested by children under the age of 3 years had to be removed surgically from the children's stomach and intestines. In three of the five incidents described in the preamble to the proposed rule, the child's parent or caregiver did not realize the child had ingested magnets, which resulted in a delay in treatment and an increase in the severity of the injuries from the magnets, which attached to each other across intestinal tissue.

3. Details Concerning Injuries

Multiple factors complicate the diagnosis of injury from magnet ingestion (77 FR 53786). These factors include a lack of awareness by medical professionals of the dangers posed by the ingestion of high-powered magnets; the inability of standard diagnostic tools to demonstrate that the ingested item is a magnet; the similarities between symptoms resulting from magnet ingestion injuries and less serious conditions like the flu; and victims' inability or unwillingness to communicate to their caregivers or medical personnel that they have ingested magnets.

The preamble to the proposed rule discussed the manner in which ingested high-powered magnets can cause harm by compressing intestinal tissue, the specific types of injuries that can result when tissue is trapped between two magnets, and the risks associated with those injuries (77 FR 53786). These injuries include perforations that can result in infection due to leakage of gut contents into the abdominal cavity and obstructions that can lead to intestinal tissue becoming necrotic or rupturing and causing contamination of the abdominal cavity. Surgical procedures often are required to remove magnets from the digestive system. Complications can arise after these procedures, including bleeding, infection, and ileus (temporary paralysis of gut motility). Long-term complications resulting from this type of surgical procedure can include: (1) Adhesions (where bands of intra-abdominal scar tissue form that can interfere with gut movement and can cause obstruction); (2) removal of long sections of injured bowel; and (3) impaired digestive function.

D. Statutory Authority

This rulemaking is conducted pursuant to the Consumer Product Safety Act (CPSA). Magnet sets are ''consumer products'' that can be regulated by the Commission under the authority of the CPSA. 15 U.S.C. 2052(a).

Under section 7 of the CPSA, the Commission is authorized to promulgate a mandatory consumer product safety standard that sets forth performance requirements for a consumer product or that sets forth requirements that a product be marked or accompanied by clear and adequate warnings or instructions. 15 U.S.C. 2056. A performance, warning, or instruction standard must be reasonably necessary to prevent or reduce an unreasonable risk or injury associated with a consumer product.

Section 9 of the CPSA specifies the procedure that the Commission must follow to issue a consumer product safety standard under section 7. In accordance with section 9, the Commission commenced this rulemaking by issuing an NPR on September 4, 2012 (77 FR 53781), including the proposed rule and a preliminary regulatory analysis under section 9(c) of the CPSA. In addition, the Commission requested comments on the risk of injury identified, the regulatory alternatives under consideration, and other possible alternatives for addressing the risk. *Id.* 2058(c). As discussed in section E of this preamble, the Commission considered the comments received in response to the proposed rule.

Section 9 also requires the Commission to provide interested persons ''an opportunity for the oral presentation of data, views, or arguments,'' in addition to an opportunity to provide written comments. *Id.* 2058(d)(2). Accordingly, the Commission held a public hearing on the proposed rule on October 22, 2013, at agency headquarters in Bethesda, MD. The hearing notice was published in the **Federal Register** (78 FR 58491). The submissions forwarded to the agency by presenters before the hearing, can be read online at: *http://www.cpsc.gov/en/Newsroom/Public-Calendar/2014/Public-Hearing/Agenda/Magnet-/.* Videos of the presentations can be viewed at: *http://www.cpsc.gov/Newsroom/Multimedia/?vid=66455.* The Commission also allowed submitters to forward additional written comments for 1 week after the hearing. We considered all of the written and oral comments received.

With this notice, the Commission issues a final rule, along with a final regulatory analysis. *See id.* 2058(f)(1). According to section 9(f)(1) of the CPSA, before promulgating a consumer product safety rule, the Commission must consider and make appropriate findings to be included in the rule on the following issues: (1) The degree and nature of the risk of injury that the rule is designed to eliminate or reduce; (2) the approximate number of consumer products subject to the rule; (3) the public's need for the products subject to the rule, and the probable effect the rule will have on utility, cost, or availability of such products; and (4) the means to achieve the objective of the rule while minimizing adverse effects on competition, manufacturing, and commercial practices. *Id.* 2058(f)(1).

Pursuant to section 9(f)(3) of the CPSA, to issue a final rule, the Commission must find that the rule is ''reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product'' and find that issuing the rule is in the public interest. *Id.* 2058(f)(3)(A)&(B). In addition, if a voluntary standard

addressing the risk of injury has been adopted and implemented, the Commission must find that: (1) The voluntary standard is not likely to eliminate or adequately reduce the risk of injury, or that (2) substantial compliance with the voluntary standard is unlikely. *Id.* 2058(f)(3(D). The Commission also must find that the expected benefits of the rule bear a reasonable relationship to the cost of the rule and that the rule imposes the least burdensome requirements that would adequately reduce the risk of injury. *Id.* 2058(f)(3)(E)&(F).

E. Response to Comments on the Proposed Rule

This section summarizes the issues raised by comments on the proposed rule and provides that Commission's responses to those comments.

1. Oral Presentations

On October 22, 2013, the Commission provided the public an opportunity to present views on the proposed rule in person before the Commission Presenters at the hearing included representatives from the Consumer Federation of American, Consumers Union, the American Academy of Pediatrics, and the National Association of Pediatric Gastroenterology, Hepatology, and Nutrition. The medical experts reported that the available research most likely reflects an undercount of the true incidence of injuries associated with magnet sets. The doctors also stated there was no evidence suggesting that the victims' caregivers were negligent or otherwise impaired at the time of the ingestion incidents. Rather, the doctors noted that ingestion-related injuries, such as those associated with magnet sets, can be experienced in households with the most caring and well-educated caregivers. The doctors also testified that public education campaigns take a long time to show effects and that those campaigns would not be as effective in reducing magnet ingestion injuries as the proposed rule, which they strongly urged the Commission to finalize.

2. Written Comments

The preamble to the NPR invited comments concerning all aspects of the proposed rule. We received written comments from more than 5,000 commenters in response to the NPR. Many of the comments contained more than one issue, and many of the comments addressed the same or similar issues. Thus, we organized our responses by issue. All of the comments can be viewed at: *www.regulations.gov,* by searching under the docket number for this rulemaking, CPSC–2012–0050.

Commission's Authority To Promulgate the Rule

(Comment 1)—Many commenters opine that promulgating the rule exceeds the Commission's authority. More specifically, several commenters state that the Commission has no authority to issue a rule that would result in a prohibition of all magnet sets currently on the market simply because certain consumers use magnets in a manner that is inconsistent with the purpose intended for the product. Other commenters opine that the rule violates consumers' constitutional rights, including the right to freedom of expression through purchasing products they desire, and that a rule that prohibits the sale of covered magnet sets is drastically out of proportion to the risks presented by the product. Other commenters characterize the safety standard as the government usurping responsibility for the safety of children, which they say should properly reside with children's parents or caregivers.

(Response 1)—The Commission has the authority to issue a rule establishing performance requirements that a product must meet so that the product does not present an unreasonable risk of injury to consumers. Section 7 of the CPSA authorizes the Commission to promulgate consumer product safety standards as performance requirements or that require products to be marked or accompanied by clear and adequate warnings and instructions. The requirements of a standard issued under this provision must be reasonably necessary to prevent or reduce an unreasonable risk of injury associated with the product. Determining whether a product presents an unreasonable risk of injury requires the Commission to consider the costs and benefits of regulatory action. The regulatory analysis discusses that assessment (see Section H of this preamble). The Commission must balance such factors as the severity of injury, the likelihood of injury, and the possible harm the regulation could impose on manufacturers and consumers. If evidence demonstrates that misuse of a product results in an unreasonable risk of injury, the Commission has the authority to promulgate a rule reasonably necessary to reduce or eliminate that risk. Certainly parents and caregivers must be responsible for their children's safety. However, as discussed elsewhere, parents and caregivers may not be aware of the hazards that magnets present. Finally, there is no constitutional right to purchase a product.

(Comment 2)—Several commenters characterize the Commission's enforcement activities (filing administrative complaints, requesting certain retailers and importers to stop sales of magnet sets, and requesting recalls of magnet sets) as improper means to prohibit certain magnet sets. The commenters suggest that rulemaking, rather than these enforcement actions, is the appropriate approach.

(Response 2)—Enforcement activities are intended to remove products from the market that present a substantial product hazard. This rulemaking proceeding is intended to establish requirements that magnet sets must meet from the effective date of the rule going forward. As such, this rulemaking proceeding seeks to impose requirements on all magnet sets subject to the rule that are sold after the rule becomes effective. The administrative proceeding and enforcement activities address only the products currently or previously distributed by specific importers and retailers.

(Comment 3)—Several commenters opine that the Commission would be acting arbitrarily or capriciously in violation of section 706(2) of the Administrative Procedures Act (APA) by promulgating the rule; that the rule violates due process requirements; and that the Commission should hold a formal hearing under Sections 556 and 557 of the APA, even if such a hearing is not required statutorily.

(Response 3)—The Commission is following the rulemaking procedures set forth in sections 7 and 9 of the CPSA and in section 553 of the APA. The commenters refer to section 556 and 557 of the APA. These provisions apply to formal rulemaking. However, the magnet proceeding is governed by section 553 of the APA, which codifies the procedure for informal rulemaking. By following the appropriate procedures under the CPSA and the APA, the Commission is providing the process that is due.

Lack of Product Defect

(Comment 4)—Commenters point out that magnet sets pose no risk of injury when used properly, that they function as intended, and therefore, they are not defective. The commenters contend that the improper use of a safe product by a minority of consumers does not render the product defective and does not warrant promulgating a rule that would remove the product from the market.

(Response 4)—To promulgate a consumer product safety standard, the

Commission must find that the rule is reasonably necessary to reduce an unreasonable risk of injury associated with the product. A product may present an unreasonable risk of injury, even if the product does not contain a fault, flaw, or irregularity that impacts the manner in which the product functions. When assessing risk, CPSC considers how consumers may actually use a product, not just the manner of use intended by the manufacturer. For example, the Commission's cigarette lighter standard requires disposable and novelty lighters to meet child-resistance requirements to protect against the misuse of lighters by children. 16 CFR part 1210. Similarly, the Commission's lawn mower standard includes requirements to guard against consumers intentionally removing a shielding safety device from the mower. 16 CFR part 1205. *See Southland Mower* v. *Consumer Product Safety Commission,* 619 F.2d 499, 513 (5th Cir. 1980) (reviewing the Commission's lawn mower standard, the court stated: ''Congress intended for injuries resulting from foreseeable misuse of a product to be counted in assessing risk'').

Impact of the Rule on the Availability of Magnet Sets for Certain Uses

(Comment 5)—Commenters state that high-powered magnets have many laudable uses, including for education and research in sciences, such as biology, chemistry, and physics. Other commenters note that magnet sets are used therapeutically for individuals with autism or attention-deficit disorder. These commenters presume that the rule would eliminate from the marketplace high-powered magnets intended for such uses.

(Response 5)—Magnets have long played a role in education. However, the specific products that are covered by the rule have been on the market only since 2008. The rule will cover only ''any aggregation of separable magnetic objects that is a consumer product intended, marketed or commonly used as a manipulative or construction item for entertainment, such as puzzle working, sculpture building, mental stimulation, or stress relief.'' Magnets that are not subject to the restrictions of the rule would continue to be available. For example, less powerful magnets are sometimes included in science kits to demonstrate magnetism. In addition, high-powered magnets that serve industrial and commercial needs would not be covered by the rule.

Products that meet the definition of the ''magnet sets'' that do not comply with this rule would no longer be available for purchase, even if used by individuals to manage their attention deficit disorder or attention deficit hyperactivity disorder (ADD/ADHD) symptoms. However, magnets that are not restricted by the rule would still be available for purchase and perhaps could be used to manage ADD/ADHD symptoms. More generally, magnets are but one of many objects, including various types of stress balls, ''worry-beads,'' and chiming Baoding hand exercise balls that are available for the uses commenters cite. A variety of other products are marketed specifically as ''fidget toys'' to help children manage ADD/ADHD symptoms. Staff is aware of one study in which the authors reported successful use of simple stress balls to help sixth graders maintain focus in the classroom (Stalvey & Brasell, Summer 2006). In short, some substitutes for magnet sets are available for management of ADD/ADHD symptoms, and successful use of these substitutes predates the availability of magnet sets.

Magnet sets present the same hazards to children with ADD/ADHD as they do to children who do not have this condition. One comment summarizes a study of 38 cases of magnet ingestion. Among those were two children, a 12-year-old and a 14-year-old with ADHD, who swallowed strong magnets, although of a type different than those typically found in magnet sets. The first child required a laparoscopy; the other child required extensive surgical intervention. One teacher who reported giving magnets to children with ADD/ADHD in his middle school classes commented that he ''needed to buy a new set every year,'' suggesting the ease with which the pieces are lost over time and the difficulty adults may have maintaining control of the sets.

(Comment 6)—Commenters note that magnet sets are fun stress-relievers and have value as an artistic medium. The commenters also note that sculpture made from the magnet sets that are the subject of the rule constitute an art form that would be lost if the rule is promulgated.

(Response 6)—The Commission is aware that magnet sets are used to relieve stress; and likewise, the Commission is aware that some individuals have developed a form of art with the magnets that would be affected if the magnet sets used for this purpose are prohibited. Although magnet sets of the type that have been involved in incidents and are currently purchased by consumers for stress relief and sculpture-making would not comply with the rule, magnet sets made from weak magnets (*i.e.,* with a flux index 50 kG^2 mm^2 or less) or from magnets that do not fit within the small parts cylinder would be allowed by the rule. Magnet sets that comply with the rule could serve some of the purposes of magnet sets that are currently available. For example, Liberty Balls, marketed by Assemble, LLC, and sold in sets of eight large spheres, are an example of a type of magnet set that would meet the performance requirements of the rule. Due to the large size of the Liberty Balls magnets, their uses are more limited than the magnet sets that are the subject of this rule. However, the existence of Liberty Balls demonstrates the possibility that companies can develop magnet sets that meet the standard and serve some of the uses of the magnet sets that fail the standard.

Similarly, children's magnetic toys provide an example of how magnet sets might be developed that would meet the standard. Children's toy manufacturers have successfully adapted their magnetic construction toys since the adoption of the requirements for toys with magnets in the 2007 edition of ASTM F963, ''*Standard Consumer Safety Specification for Toy Safety.''* Following this example, individual magnets with a flux index over 50 could be permanently connected by rods or other means, such that the resulting magnetic objects are not small parts, *i.e.,* do not fit entirely within the small parts cylinder. Such a magnet set might not be a perfect substitute for current magnet sets but could fulfill some of the uses of current magnet sets, without posing the risk of injury or death.

(Comment 7)—Noting the popularity of magnet sets for educational, scientific, and therapeutic uses, some commenters claim that continued demand for small, high-powered magnets would result in a ''black market'' for the products after the rule is promulgated. Some commenters state that there could be consumer-to-consumer sales of used products, and others maintain that consumers would be able to purchase magnet sets directly from noncomplying companies (including firms located in China). A few commenters note that these black market magnet sets are less likely to be sold with warning labels or other accompanying information related to hazards.

(Response 7)—We acknowledge that there would continue to be a demand for magnet sets by some consumers, which could lead to increases in consumer-to-consumer sales and potentially black market sales of the products. Furthermore, such sales are probably less likely to be accompanied by labeling and warnings that alert buyers to the hazards associated with

the products. CPSC enforcement activities and continued dissemination of consumer information on the hazards of magnet sets might be necessary to reduce the future sales of noncomplying products.

(Comment 8)—Some commenters opine that magnet sets that comply with the size and flux index requirements of the rule will lose their utility as manipulative desk toys. Other commenters suggest that weaker magnets would be less safe because weaker, individual magnets could be separated more easily from the magnet set during use, or separate more readily within the gastrointestinal system if ingested while attached to other magnets.

(Response 8)—The intent of the rule is to reduce or eliminate the hazard presented by magnet sets currently on the market by requiring that magnet sets and individual magnets for use with magnet sets that are small enough to fit within the small parts cylinder must have a flux index of 50 kG^2 mm^2 or less. The rule would still allow strong magnet sets with magnets that do not fit entirely within the small parts cylinder. Magnetic products sold as toys that comply with the toy standard for children have included rods, balls, and various geometric shapes that do not fit within the small parts cylinder. Such products offer interesting entertainment, such as sculptures and construction activities, but they are much larger and safer than the subject magnet sets intended for adults. Another possibility would be to invent a magnet set composed of magnets with a flux index below 50 kG^2 mm. Because there currently are no magnet sets on the market with magnets that have a flux index of less than 50 kG^2 mm^2, we do not know how such magnets would perform when used in the same way currently available magnet sets perform.

Magnet sets that comply with the requirements of the rule would contain magnets that are too large to be swallowed easily or would have very weak attraction forces that would not pose the same ingestion hazards as magnet sets currently on the market. Review of incident data does not indicate that any injuries have been caused by magnets with flux index values below 50 kG^2 mm^2.

(Comment 9)—Some commenters disparage the intended uses of magnet sets, calling them, for instance, ''mindless desk ornaments,'' ''a diversion,'' and ''frivolous items.'' These commenters cite the high severity of the injuries associated with magnet sets and express dismay that the CPSC ever allowed them to be sold.

(Response 9)—The CPSC does not perform premarket approvals of consumer products; and typically, the CPSC will not engage in enforcement or regulatory activity regarding a product, until information is received or developed, which indicates that the product may present an unreasonable risk of injury to consumers. Reasonable parties may differ on the value to society of manipulative toys; however, many types of manipulative toys exist for children and adults.

Impacts of the Rule on Businesses and Jobs

(Comment 10)—Many commenters note that the rule would harm firms that import magnet sets and will result in lost jobs for employees of these firms.

(Response 10)—In the preliminary initial regulatory analysis, staff noted that the economic impact of the rule would be most severe for the seven firms that account for the great majority (perhaps more than 98%) of units sold as of June 2012. Five of these importers reportedly derived most or all of their revenues from the sale of the magnet sets that do not meet the performance requirements of the rule. The other two leading importers of magnet sets reportedly had fairly broad product offerings, which could lessen the severity of the economic impact of the rule. As a result of compliance activity pursued by the Commission's Office of Compliance and Field Operations, four of these seven importers agreed voluntarily to stop selling magnet sets that would not be compliant under this rule. One additional firm, Maxfield & Oberton Holdings, LLC, ceased operations. This firm (marketer of ''Buckyballs'') is believed to account for nearly 90 percent of magnet set sales through June 2012. Only one of the seven small importers, Zen Magnets, LLC, continues to market magnet sets that are subject to the rule. This firm apparently derives all of its revenues from the sale of magnet sets. Unless the firm can successfully market magnet sets that comply with the rule or other products, the firm might go out of business when the rule takes effect.

A large share of magnet sets have been sold directly to consumers by importers who used their own Internet Web sites or other Internet shopping sites, but the rule would also affect retailers of the products, whether the products are sold online or physically in stores. However, these retailers are not likely to derive significant proportions of total revenues from sales of affected magnet sets. Accordingly, the impacts on individual firms should be minimal.

The commenters are correct that the rule, by prohibiting the sale of noncompliant magnet sets in the United States, may also result in some job losses. However, the impact on job losses is probably limited because magnetic balls generally are produced outside the United States and are merely packaged and/or distributed by U.S. importers.

Costs and Benefits of the Rule

(Comment 11)—One commenter opines that the preliminary regulatory analysis overstates the societal costs of injuries from magnet sets because incidents involving other small magnets are improperly attributed to the magnet sets that are the subject of the proposed rule. In addition, this commenter opines that the injury costs used in the analysis were higher than indicated by the CPSC's Revised Injury Cost Model (ICM).

(Response 11)—Both the initial and final regulatory analyses acknowledge that there is some uncertainty concerning the estimated annual average of medically attended injuries, noting that some of the cases described as ''possibly'' involving magnet injuries, actually may not have involved the magnets that are the subject of the rule. Hence, it is possible that the analyses overstate the societal costs associated with the magnets included in the rule. The final regulatory analysis also points out that there were an additional 230 NEISS cases (representing about 1,500 emergency department-treated injuries annually) in which the magnet type was classified as ''unknown or other.'' Thus, to the extent that this category of incidents involved magnets covered by the rule, the analyses would tend to understate the societal costs associated with the magnets subject to the rule. Therefore, given the uncertainty concerning the societal costs associated with the magnet sets, the analyses could be underestimating or overestimating the societal costs.

Regarding the commenter's assertion that injury costs used in the preliminary regulatory analysis were higher than indicated by the ICM, we note that the commenter fails to take into account updates to the ICM based on new and improved cost databases. The ICM is fully integrated with NEISS and provides estimates of the societal costs of injuries reported through NEISS. The major aggregated components of the ICM include: Medical costs; work losses; and the intangible costs associated with lost quality of life or pain and suffering. The ICM is described further in section H.3.a of the preamble. The commenter also does not

take into consideration that the cost estimates in the preliminary regulatory analysis were age and sex specific and involved only those under the age of 15 who had ingested magnets from magnet sets. Furthermore, the commenter apparently also includes injury costs associated with the diagnosis category ''foreign body,'' *i.e.,* foreign objects propelled into the victim's body, which is a different hazard pattern than ''ingested foreign objects.'' The costs of injuries resulting from foreign objects being propelled into a victim's body are only about half of the costs of injuries associated with ingested foreign objects. Finally, the commenter applies inappropriate inflators in adjusting the injury cost estimates to 2011 dollars. The Commission maintains that the estimated injury costs associated with ingestions of small, high-powered magnets in the preliminary regulatory analysis and final regulatory analysis involved proper application of the ICM.

Risk and Severity of Injury

(Comment 12)—The Commission received a significant number of comments from health care professionals with personal experience in treating children who either narrowly avoided, or actually sustained, injuries following ingestion of small, high-powered magnets.

Virtually all comments received from medical professionals express support for a rule eliminating magnet sets of the type that have been involved in incidents. The medical professionals point out that injuries caused by the ingestion of high-powered magnets are often difficult to diagnose because of the inability of standard diagnostic tools to demonstrate that the ingested item is a magnet; there are similarities between symptoms resulting from magnet ingestion injuries and less serious conditions like the flu; and the victims are unable or unwilling to communicate to their caregivers or medical personnel that they have ingested magnets. The medical professional commenters express concern with the rapidly growing number of cases and note that magnet ingestions often result in rapid and severe injuries with devastating and costly long-term consequences.

(Response 12)—The Commission is aware of the severity of the injuries that often result from the ingestion of small, high-powered magnets from magnet sets and the difficulties frequently encountered by medical professionals in diagnosing and treating these injuries. The Commission is also aware that there are costs associated with the treatment of injuries resulting from the ingestion of these magnets that will be reduced substantially if magnet sets must comply with the rule. (See Section H of this preamble).

(Comment 13)—Commenters argue that high-powered magnet sets should not be prohibited because the number of injuries is low—43 reported injuries possibly involving magnet sets during the period from January 2009 to June 2012—considering that approximately 2.7 million magnet sets have been sold since 2009. These commenters also note that there have been no fatalities associated with the product.

(Response 13)—The number of incidents reported to the Commission, now totaling 100 cases through June 24, 2014, cannot be used to estimate the number of injuries in the U.S. population because case reports are anecdotal and are not based on a probability based sampling design. The anecdotal incidents reported to CPSC constitute a minimum number of incidents in the U.S. However, the incidents reported to CPSC through hospital emergency departments and captured in the NEISS database can be used to estimate the number of incidents nationwide because NEISS data come from a probability based stratified random sample of U.S. hospitals with emergency departments. An analysis of incidents obtained through the NEISS estimates that 2,900 possible magnet set, emergency department-treated ingestions occurred in the United States from January 1, 2009 through December 31, 2013. This amounts to approximately one incident per 930 magnet sets. We do not agree that this is a low figure for injuries. In addition, we are aware of one fatality involving a 19 month-old female, who died from ischemic bowel caused by the ingestion of magnets from a magnet set.

Furthermore, the benefits of the rule, notwithstanding the public's desire for current magnet sets that do not meet the rule, bear a reasonable relationship to the costs of the rule.

(Comment 14)—Several commenters point out that the dangers posed by the ingestion of small, high-powered magnets are not obvious.

(Response 14)—Staff agrees that the unique hazard resulting from the ingestion of small, strong magnets is unlikely to be obvious to the general public. People are generally aware of the choking hazard posed by small balls and other small parts, but they do not understand how the characteristics of magnets can cause injuries that are different from, and more severe than, swallowing another small object. Despite the publicity and response generated by the NPR, as well as the Commission's compliance and communications activities, some commenters misunderstand the hazard. Many commenters seem unaware that the majority of victims are older children and teens, and the commenters focus exclusively on the risk to young children. Similarly, commenters tend to mention magnets as a choking hazard, comparable to choking on foods, such as hot dogs and non-food small parts. In reality, choking is not the injury mechanism related to magnets. The ways that children and teens interact with magnets are not obvious and seem unclear to many commenters. For example, some commenters write derisively about ''people letting their children eat magnets.'' However, most incidents are unwitnessed, and based on data from choking and poisoning incidents in which children intentionally ingest non-food items, it is likely that only the youngest children voluntarily swallow magnets. This is because choking on non-food items occurs predominantly among children younger than three years, and ingestion of poisonous substances declines as children approach five years of age.

(Comment 15)—Other commenters point out that the Commission has not prohibited certain products, such as trampolines, balloons, and hazardous household chemicals, which commenters contend present a greater risk of injury to children than magnet sets. They assert that this weighs against a rule prohibiting certain magnet sets that do not meet the rule's performance requirements.

(Response 15)—Magnet sets, and the hazard patterns associated with them, are quite different from other products. Because of these differences, comparisons of injury rates between magnet sets and other products are not meaningful. Key differences include: the obviousness of the hazard; the severity of the resulting injury; the difficulty in diagnosing the resulting injury; the numbers of products in use; the breadth of products covered in the product category; the age of the victims sustaining injuries; and the existence of requirements to address the hazard.

Responsibility of Caregivers for Injuries Resulting From Magnet Ingestion

(Comment 16)—Several commenters claim that the incidents involving magnet sets are caused by negligent caregivers, who should supervise their children better. However, other commenters opine that caregiver supervision was not a relevant factor in determining the causation of the incidents.

(Response 16)—The issue of caregiver supervision is related to caregiver

compliance with warnings and other hazard communications. Consumers may be aware of a hazard, but they may not make changes in their behavior that would avoid the hazard. Securing or preventing access to magnet sets would be especially difficult regarding older children and adolescents because they are strongly independent and resourceful. Expecting caregivers to supervise these children constantly is unrealistic. Magnet ingestions can happen quickly, and the Commission believes that it is also unrealistic to expect caregivers to maintain continuous, focused attention on younger children, especially children at the upper end of the at-risk age range. Indeed, research has found that people cannot be perfectly attentive, particularly over long periods of time, regardless of their desire to do so.[3] Caregivers are likely to be distracted, at least occasionally, because they must perform other tasks, are responsible for supervising more than one child, are exposed to other salient but irrelevant stimuli, or are subject to other stressors.

Moreover, caregivers are unlikely to maintain high levels of vigilance, unless they believe that such vigilance is necessary. If caregivers who own magnet sets believe they have properly secured the sets or think that their children are not aware of the sets, caregivers are unlikely to assume that constant supervision is needed. Furthermore, children may be exposed to these magnet sets in locations where caregivers cannot supervise the children or do not have direct control over the amount of supervision required, such as at school or in other households. Adolescents, in particular, are strongly independent, and it is unrealistic to expect caregivers to supervise adolescents constantly.

Alternatives to the Rule: Warnings and Education Programs

(Comment 17)—Many commenters state that current warnings are sufficient to address the risk of injury presented by magnet sets, or they express the belief that more robust and prevalent warnings and educational programs are a better alternative than a rule prohibiting products that do not meet the rule's performance requirements. Some commenters state that the assumption that warnings do not work undermines past safety standards accepted by the CPSC and, in fact, calls into question the entire safety-monitoring process.

(Response 17)—As discussed in the Human Factors staff memorandum that was part of the NPR briefing package, warnings are widely recognized as a less reliable approach to controlling hazards than design or guarding approaches. Unlike these latter approaches, which directly limit hazard exposure, warnings and other hazard communications must first educate consumers about the hazard and then persuade consumers to change their behavior to avoid the hazard. In addition, to be effective, warnings must rely on consumers to behave consistently, regardless of situational or contextual factors (*e.g.,* fatigue, stress, social influences) that influence precautionary behavior.

The Commission's position is not that warnings are uniformly ineffective. However, consumer compliance with warnings depends strongly on the specific circumstances surrounding the hazard. Several factors suggest that compliance with warning labels related to magnet sets is likely to be low because consumers may not notice and attend to the warnings. Exposure to ingestion warnings is likely to be very limited because: (1) The individual magnets are too small to contain on-product warnings; (2) the magnet sets do not inherently require consumers to return the magnets to a storage case or other package after every use, in packaging that might include a warning; and (3) the magnet sets can be manipulated without the necessity of referring to instructions that might include a warning. In addition, the nature of the magnet-ingestion hazard and the resulting injuries can be difficult to convey to consumers; and the resulting injuries have been misunderstood even by medical personnel and by commenters to the NPR, some of whom erroneously identify choking on the magnets as the hazard presented by this product. Without a clear understanding of this information and how magnet ingestions differ from other small-part ingestions, consumers are unlikely to comply with a warning.

We acknowledge that developing understandable warnings aimed at parents and other caregivers may be possible; and we acknowledge that caregivers who receive such warnings may attempt to keep these products out of the hands of young children. However, as noted, consumer compliance with warnings depends strongly on the specific circumstances surrounding the hazard. Several factors suggest that compliance with warning labels related to magnet sets is likely to be low, even if consumers understand the hazard and its consequences. For example, the cost of compliance associated with magnet-ingestion warnings is high. ''Cost of compliance'' is defined as any cost, such as time, effort, or inconvenience that is required to comply with a warning; compliance is negatively associated with cost. The warnings on the packaging and instructional material for some magnet sets instruct consumers to secure the magnets and keep them away from all children ages 14 years and younger. As evidenced in the comments, many consumers are likely to reject these warnings as lacking credibility. We recognize that caregivers who receive warnings about magnet sets may attempt to keep these products out of young children's hands. However, warnings are likely to be particularly ineffective among caregivers with older children and adolescents because caregivers would not expect these children to mouth toys and other objects as frequently as younger children. Furthermore, even if caregivers attempt to comply with warnings about the magnet-ingestion hazard, preventing a child's access to these magnets still might prove quite difficult. The time and effort to secure the product after every use, and the difficulties associated with trying to identify a suitably secure location to store the product, may deter consumers from heeding the warnings.

Some adolescents have cognitive and motor skills similar to an adult's, making it extremely challenging to keep the product out of adolescents' hands, despite caregivers' efforts. Although adolescents also may be capable of understanding warnings about magnet ingestions, their behavior is influenced strongly by social and peer pressures, and adolescents are known to test limits and bend rules.[4] Thus, warnings against using magnets to simulate tongue or facial piercings are unlikely to be very effective among this age group, unless such piercings are viewed as socially unacceptable among their peers.

Educational programs may offer more opportunities to present the information in varied ways and in greater detail than is possible via a warning label.

[3] Wickens, C. D., & Hollands, J. G. (2000). Engineering *psychology and human performance* (3rd Ed.). Upper Saddle River, NJ: Prentice Hall.

[4] Brown, T., & Beran, M. (2008). Developmental stages of children. In R. Lueder & V. J. B. Rice (Eds.), *Ergonomics for children: Designing products and places for toddlers to teens* (pp. 13–30). New York: Taylor & Francis. Kalsher, M. J., & Wogalter, M. S. (2008). Warnings: Hazard control methods for caregivers and children. In R. Lueder & V. J. B. Rice (Eds.), *Ergonomics for children: Designing products and places for toddlers to teens* (pp. 509–539). New York: Taylor & Francis. Zackowitz, I.B., & Vredenburgh, A.G. (2005). Preschoolers, adolescents, and seniors: Age-related factors pertaining to forensic human factors analyses. In Y. I. Noy & W. Karwowski (Eds.), *Handbook of human factors in litigation* (Chapter 35). Boca Raton, FL: CRC Press.

However, mere knowledge or awareness of a hazard is not enough. Such programs suffer from limitations similar to those of warnings because, like all hazard communications, the effectiveness of educational programs depends upon the affected consumers, not only in terms of receiving and understanding the message, but also in being persuaded to heed the message. Magnet sets present an especially difficult challenge for public education programs because the hazard is obscure and difficult to convey in simple terms. Furthermore, teenagers are a significant part of the at-risk population, and they provide distinct challenges to the effectiveness of public education programs. Thus, even education programs that clearly communicate the hazard to consumers will not necessarily motivate appropriate behavioral change or reduce the frequency of incidents.

Alternatives to the Rule: Bitterants

(Comment 18)—A small number of commenters discuss bitterants (also known as aversives) as an option. Some conclude that adding a bitter coating to magnets would be an effective alternative to the prohibition of magnet sets that do not meet the rule's performance requirements. A few commenters assert that the method is unproven and question that approach for various reasons.

(Response 18)—In principle, adding an aversive agent to a product is a rational approach to reducing the risk of mouthing and ingestion. Laboratory studies have shown this approach to be effective among children and adults in deterring repeated ingestion of various substances. Yet, real-world investigations have not demonstrated the effectiveness of bitterants in preventing poisonings.[5] CPSC staff's 1992 final report of its study of the topic (*http://www.cpsc.gov/library/foia/foia99/os/aversive.pdf.* at p. 3) concluded that because bitterants do not deter initial ingestion, ''[a]versive agents are unlikely to protect children from being harmed after ingesting . . . substances that can injure or kill after one or two swallows.''

Bitterants are least likely to be effective among young children who gain access to high-powered magnets. Despite rejecting bitter substances in testing environments, children in home settings, nevertheless, frequently ingest unpalatable substances, such as gasoline, cleanser, toilet bowl cleaner, and ammonia. Younger children, particularly those under 3 years of age, may swallow a number of magnets at a time before reacting to any aversive agent applied to the magnets.

Aversives may be a more effective deterrent for older children and young teens, presuming these children are aware that the agent has been applied to the magnets and they are familiar with its taste. For older children who are not familiar with the taste of an aversive, the mere presence of the agent would not deter mouthing the magnets or trying to use them to mimic pierced lip or tongue jewelry. Older children and teens may also give magnets to others to try as a prank. Preteens and teens are prone to test what they have been told, particularly when what they have been told involves restrictions of any sort. Thus, warnings that the products taste bad may not prevent children in these age groups from tasting the magnets. (Some proportion of the population, possibly as high as 30 percent, may be insensitive to bitterants such as denatonium benzoate.) However, children are likely to reject magnets treated with bitterants, and the bitterant may indeed deter repeated attempts among most children.

Ingestions could still occur even if a bittering agent is found effective for this purpose. Ingestions may be intentional among the youngest children, but ingestions are likely to be accidental among older groups. The power of the magnetic forces inherent in these products can cause magnets to move erratically as pieces repel or attract, and movement of magnets toward the back of the throat could trigger the reflex to swallow the magnets before the person can remove them.

Alternatives to the Rule: Child-Resistant Packaging

(Comment 19)—Several commenters state that child-resistant (CR) packaging requirements are a better alternative than the proposed performance requirements. However, others believe that such requirements would be ineffective in reducing or eliminating the risk of injury.

(Response 19)—CR packaging could be devised to make an enclosed magnet set inaccessible to most young children. However, compliance with CR packaging is likely to be low and inconsistent; and the effectiveness of this approach depends on the caregiver and other users securing the magnets in the CR packaging after every use. This is behavior that we consider unlikely to occur. Although CR closures have been shown to be effective in reducing poisonings with various products (*e.g.,* Rodgers, 2002), non-use and incorrect use of CR closures on products containing chemicals or pharmaceuticals—products consumers are more likely to understand to be hazardous (as opposed to strong magnet sets)—can result in many poisonings annually among children younger than 5 years old. Furthermore, CR packaging, referred to as ''special packaging'' under the Poison Prevention Packaging Act, is designed to be significantly difficult for children under 5 years of age to open. 15 U.S.C. 1471(4). Thus, CR packaging is an impractical approach for older children, whose cognitive and motor skills overlap those of adults.

Flux Index

(Comment 20)—One commenter questions the relationship of the flux index (FI) to anatomical data, which the commenter considers to be most germane to the hazard. The commenter requests that the rule be modified to redefine the criteria, ''by relying on objective anatomical data tied to the potential risks associated with swallowing injuries and refine the testing protocol to isolate the field strength and/or attach forces that can reasonably be expected to develop at the distances reflected by anatomical data.'' Referencing an ultrasound study, the commenter asserts that the minimal gut wall thickness in children is 0.5 mm, and the commenter suggests that when measuring the magnet maximum surface gauss reading, instead of measuring at a probe distance of 0.25 to 0.51 mm above the magnetic pole surface, as currently required in ASTM F963–11, it is more appropriate to base the measuring distance on the minimum gut wall thickness. The commenter suggests that using a probe separation distance of 1.0 mm (2×0.5 mm = 2 sections of gut wall) makes more sense because 1 millimeter ''is the magnetic field strength at that critical distance that may bear a rational relationship to injuries.''

(Response 20)—Commission staff agrees that the strength of the magnet field and the separation of the magnets, or lack thereof, are important factors contributing to the risk of injury posed by any strong magnet. The gastrointestinal (GI) system is folded on itself within the abdominal cavity, and during transit through the GI system, there are many opportunities for magnets in different GI locations to pass nearby to each other and then interact when separated by only the thin gut walls. Commission staff believes that measuring the maximum surface gauss reading for the FI input at a set distance of 1.0 mm (equivalent to two

[5] Cf. White, N. C., Litovitz, T., Benson, B. E., Horowitz, B. Z., Marr-Lyon, L., & White, M. K. (2009). The impact of bittering agents on pediatric ingestions of antifreeze. *Clinical Pediatrics, 48*(9), 913–921.

thicknesses/layers of gut wall) is oversimplistic and inappropriate, unless the maximum surface gauss reading measured at that 1.0 millimeter distance is essentially zero.

Although the suggested value of 1.0 millimeter is anatomically valid, it is not particularly meaningful in terms of the injury mechanism. This is because conventional magnets do not ''wait'' to get within 1 millimeter of each other before they begin to interact, and the gut wall cannot block magnetic forces. Rather, once a pair of magnets comes within a distance where the extent or reach of their magnetic fields allows them to interact, the result is near-instantaneous attraction, with consequent near-instantaneous compression of any trapped tissues. Although the thin wall of the small intestine can be conveniently defined anatomically by its thickness, the tissue offers minimal resistance to the compression forces of the magnet. Thus, the tissue trapped between magnets may be compressed so that the distance between the magnets is much smaller than 1.0 millimeter. The compression forces deprive the tissue of its blood supply, and they also squeeze out the tissue fluids, rapidly reducing the gut wall thickness to micron values, and essentially mummifying the tissue *in situ.* The measurement distance for the FI in the rule is closer to this negligible distance than the 1.0 millimeter distance that the commenter suggests; and therefore, the measurement distance for the FI in the rule is more appropriate for defining powerful magnets capable of causing GI injuries.

(Comment 21)—Several commenters question whether a flux index value of 50 kG^2 mm^2 is low enough to prevent harm.

(Response 21)—The development of the flux index requirement that appears in ASTM F963, *Consumer Safety Specification for Toy Safety,* which is now a mandatory CPSC standard, was outlined in the NPR. (77 FR 53781–82, September 4, 2012). ASTM F963–11 defines a ''hazardous magnet'' and a ''hazardous magnet component'' as one that has a flux index greater than 50 kG^2 mm^2 and that is a small object. ASTM set the flux index value at 50 kG^2 mm^2, by measuring the weakest magnets in children's toys that were suspected of causing injuries, and then adding a safety factor. Review of incident data related to children's toys and magnet sets does not indicate that any injuries have been caused by individual magnets with flux index values below 70. CPSC staff will continue to monitor incidents and seek information about the lower-bound limits of the injury mechanism so that the established method continues to be appropriate.

(Comment 22)—Several commenters question whether the rule is adequate for assessing the hazard posed by an aggregation of individual magnets, each of which has a flux index of 50 or less.

(Response 22)—The staff memorandum included in the NPR briefing package acknowledged concerns with the existing ASTM F963 standard method regarding aggregated magnets, as follows: ''A toy with multiple weak small part magnets could present an issue that the existing ASTM F963 magnet requirements do not address, namely: stacking or stringing of magnets. . . . when these small part magnets are combined, they could create a(n aggregated) magnet with an effective flux index over 50 kG^2 mm^2 depending upon their characteristics.'' (Notice of Proposed Rulemaking for Hazardous Magnet Sets, Staff Briefing Package, pp. 54 − 55). Individual magnets with a flux index of 50 kG^2 mm^2 or less (which currently do not exist in the market) would be smaller and more difficult to manipulate and have less attraction force than magnets in existing magnet sets. Individual magnets with a flux index of 50 kG^2 mm^2 or less could be mounted permanently or attached side-by-side to create a magnetic object with multiple magnetic poles on one surface. Doing so would create a multipole magnetic object that has a higher attraction force than the individual magnets on its surface. Because there currently are no magnet sets on the market with magnets that have a 50 kG^2 mm^2 flux index or less, we do not know how they would perform when used as a part of a magnet set.

(Comment 23)—One commenter disagrees with the proposed flux index method, stating that the commenter's proprietary technology could be used to make ''safe'' magnet sets, even if the flux index measurement of individual magnets is greater than 50. The commenter uses a proprietary technology to magnetize the surface of a single magnet to create multiple poles (positive and negative regions) on the surface of a single magnet. The commenter refers to these proprietary magnets as ''Polymagnets.®'' Essentially, this process creates a permanent aggregation of north and south poles in the surface of a single magnet. The commenter requests that the Commission narrow the scope of the rule to apply only to magnet sets comprised of magnets having no more than two magnetic pole regions on any exposed magnet surface, thereby, exempting multiple pole magnets.

(*Response 23)*—The commenter's claim that a process exists that could be used to make ''safe'' magnet sets, even if the flux index measurement of individual magnets is greater than 50 kG^2 mm^2, is based on proprietary technology, which, to our knowledge, has not been applied to any magnet sets currently on the market. The commenter concedes that he ''has not fully analyzed the use of a densely coded pattern'' on small cubes or spheres and claims only that ''early indications suggest that dramatic improvements to the magnetic field * * * can be achieved'' using the proprietary technology. These statements indicate that the commenter has not applied this technology to small, high-powered magnet sets or even concluded that such an application is scientifically possible or economically feasible. CPSC is not aware of any magnet set products on the market that are comprised of magnets with multipole surfaces using the commenter's technology. Moreover, it is not likely that this process will be applied to small, high-powered magnet sets in the foreseeable future. Thus, the Commission does not believe that any exemption for these types of magnets is necessary or appropriate, particularly because currently, no Polymagnet® magnet sets exist that could be tested to determine whether such magnet sets present an unreasonable risk of injury.

(Comment 24)—The same commenter also states that the flux index measurement method is imprecise because it provides a range of acceptable distances between the gauss meter and the magnetic surface being measured.

(Response 24)—The flux index measurement method specifies the use of a gauss meter and an axial probe with a distance between the active area (diameter of 0.76 +/− 0.13 mm) and probe tip of 0.38 +/− 0.13 mm. This means the magnetic flux density is measured at a distance of between 0.38 millimeters and 0.51 millimeters above the magnet surface. The tolerance cited accounts for variations in the length of the axial probe tip, which is a function of the equipment used, and therefore, does not constitute a precise value.

F. Description of the Final Rule

The Commission is issuing a rule establishing a standard for magnet sets and individual magnets that are marketed or intended for use with or as magnet sets. This section of the preamble describes the rule, including differences between the proposal and the final rule.

1. Scope, Purpose, and Effective Date—§ 1240.1

This section of the final rule states that the requirements in 16 CFR part 1240 are intended to reduce or eliminate an unreasonable risk of injury to consumers who ingest magnets that are part of magnet sets and individual magnets that are marketed or intended for use with or as a magnet set. The standard applies to all magnet sets, as defined in § 1240.2, and relevant individual magnets manufactured or imported on or after the date 180 days after publication of the final rule.

Individual magnets. The scope of the final rule has been revised from the proposal so that the rule explicitly covers magnets that are sold individually and are intended or marketed to be used in the same way as magnet sets or as a part of a magnet set. The Commission is aware of one firm that sells magnet sets and also sells single magnet spheres at a per-magnet price through the same Web site on which the firm promotes and sells sets of magnets. This firm sells individual magnet spheres for 10 cents each and allows customers to purchase up to 1,152 magnets in a single order. The firm charges a shipping rate of $5.00 for any quantity of individual magnets purchased. Another firm, Star, which recently settled an administrative complaint with the Commission, sold individual magnet spheres for between 9 and 19 cents each (depending on the number ordered), and allowed customers to purchase up to 10,000 magnets in a single order.

Because the proposed rule described the scope of the rule as covering aggregations of magnets, magnets that are sold individually, arguably would not be subject to the requirements of the safety standard under the scope provision, as proposed. Thus, under the proposed scope, firms might be able to circumvent the safety standard requirements simply by pricing and selling magnet spheres individually that are intended to be used as part of an aggregation of magnets as a magnet set. Under the final rule, all magnet spheres intended for use as magnet sets, as defined by the rule, are subject to the requirements of the safety standard, whether they are sold individually or in the aggregate.

Changing the word ''children'' to ''consumers.'' The proposed scope section stated that the rule is intended to reduce or eliminate an unreasonable risk of injury to children. The final rule changes the word ''children'' to ''consumers'' to clarify that the rule is intended to address risks posed to teens as well as young children. As the incident data make clear, both teens and young children have been harmed when swallowing magnets from magnet sets. Because the term ''children'' could be subject to interpretations that might exclude teens, the final rule uses the term ''consumers.''

2. Definitions—§ 1240.2

This section of the final rule provides definitions for the terms ''magnet set'' and ''individual magnet.'' The final rule modifies the proposed definition of ''magnet set'' to clarify certain aspects of the definition. The Commission does not intend for these modifications to change the scope of the rule from the proposal, but rather, to describe more clearly the products subject to the rule. The final rule also adds a definition for the term ''individual magnet.''

Definition of ''magnet set.'' To respond to comments on the NPR and to provide greater precision, the Commission has modified the definition of ''magnet set'' in the proposed rule by:

- Removing the word ''permanent'';
- Replacing the phrase ''intended or marketed by the manufacturer primarily'' with the phrase ''intended, marketed or commonly used'';
- Replacing the word ''desk toy'' with ''item''; and
- Specifying factors that could indicate whether a magnet set meets the definition.

The final rule definition removes the word ''permanent'' from the phrase ''separable, permanent magnetic objects'' because the word ''permanent'' is superfluous. Any magnet, whether it maintains its magnetic strength permanently or not, can cause serious damage to intestinal tissue, if ingested.

The final rule replaces the phrase, ''intended or marketed by the manufacturer primarily,'' with the phrase: ''intended, marketed or commonly used.'' The revision seeks to prevent a manufacturer or importer of magnet sets from avoiding the rule by simply stating in marketing and other materials that the magnets are intended for uses other than those specified in the definition. For example, this modification will preclude firms from claiming that their products are intended as science kits to avoid the rule, if, in fact, the products are commonly used as magnet sets (*i.e.,* as a manipulative or construction item for entertainment, such as puzzle working, sculpture building, mental stimulation, or stress relief). Common uses may be indicated by information found in consumer reports to the CPSC, firm reports to the CPSC, injury reports, and consumer comments/reviews posted on product Web sites stating that a product, regardless of whether it is intended or marketed by the manufacturer as such, was, in fact, being used as a manipulative or construction item for entertainment, such as puzzle working, sculpture building, mental stimulation or stress relief. This change clarifies that the common usage of a firm's magnet products could be a consideration in determining whether the magnets are intended for use as manipulatives for entertainment, irrespective of the firm's stated intentions.

The final rule definition replaces the term ''desk toy'' with ''item'' to prevent excluding magnet sets from the scope of the rule if a particular product is not explicitly labeled or expressly marketed as a desk toy.

The final rule specifies factors that are relevant in determining the intended uses of a magnet set. These are factors that Commission staff may consider in determining whether a product falls under the definition of ''magnet set.'' Explicitly stating these factors in the rule should provide clearer direction to firms and the public about what products will be covered by the rule. We may consider the manner in which the individual magnet or magnet set is promoted, marketed, and advertised. As part of this inquiry, staff may review the labeling and packaging of the product, information on the firm's Web site about intended uses of the product, information in other promotional materials, and where and how the product is displayed at retail stores or on the Internet. In addition, we may consider the uses for which the product is commonly recognized by consumers. Information provided by consumers and firms, injury reports, and consumers' online reviews or comments for the product are examples of sources that could be useful to determine what consumers consider to be the uses of the product.

In developing this part of the ''magnet set'' definition, the Commission considered regulatory and statutory provisions that describe factors to be used in determining the intended use of a product. The Commission's small parts regulation specifies factors relevant to a determination of which toys and other articles are intended for use by children under 3 years of age. 15 U.S.C. 1501.2(b). The small parts regulation states: ''In determining which toys and other articles are intended for use by children under 3 years (36 months) of age, for purposes of this regulation, the following factors are relevant: the manufacturer's stated intent (such as on a label) if it is a reasonable one; the advertising,

promotion, and marketing of the article; and whether the article is commonly recognized as being intended for children under 3.'' *Id.* The definition of ''children's product'' in the CPSA lists factors to consider in determining whether a product is primarily intended for children 12 years of age or younger. 15 U.S.C. 2051(a)(2). The ''magnet set'' definition draws from both the regulatory definition in the small parts rule and the statutory definition of ''children's product'' to specify factors, which include the manufacturer's stated intent, information provided with or on the product, and the commonly recognized uses of the product.

The definition does not include other magnetic products, such as toys intended for children and jewelry. Magnets that are part of a toy intended for children are already covered by the requirements in ASTM F963–11, which is a mandatory CPSC standard. The definition also does not include magnets intended for industrial or commercial applications, such as motor components, magnetic bearings, magnetic couplings, welding clamps, oil filters, disc drives, loudspeakers, headphones, microphones, instrumentation, switches, and relays.

Definition of ''individual magnet.'' The final rule adds a definition of ''individual magnet.'' As discussed above, the Commission is aware that the firm that currently sells magnet sets that would be prohibited by the rule also sells individual magnets for use with magnet sets. The Commission seeks to prevent firms from circumventing the rule by selling individual magnets for the same uses as the magnet sets that have been involved in incidents, and at the same time claiming that the individual magnets are not subject to the rule because the magnets are not sold as sets. The individual magnets covered by the rule are only the magnets that are intended or marketed for use with or as a magnet set. The Commission does not intend to cover the many types of individual magnets that are sold for other uses, such as refrigerator magnets, collar stays, or various commercial and industrial uses.

3. Requirements—§ 1240.3

This section sets forth the requirements for magnet sets. If a magnet set contains a magnet that fits within the small parts cylinder that CPSC uses for testing toys, all magnets from that set must have a flux index of 50 kG^2 mm^2 or less. Because the final rule covers individual magnets that are intended or marketed for use with or as a magnet set, the requirements section of the final rule states that individual magnets, as defined in the rule, must meet the requirements. The proposed rule set out the small parts and the flux index requirements in two subsections of § 1240.3. The final rule consolidates these provisions into one section.

The small parts cylinder referenced in the rule is specified in 16 CFR part 1501—Method for Identifying Toys and Other Articles Intended for Use by Children Under 3 Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts. If an object fits completely within the small parts cylinder, this indicates that the object is small enough to be ingested. If a magnet that is part of a magnet set (or an individual magnet, as defined) is too large to fit within the small parts cylinder, the magnet meets the standard, regardless of the magnet's flux index.

Small magnets (*i.e.,* those that fit within the small parts cylinder) that are part of a magnet set (and individual magnets, as defined) must have a flux index of 50 kG^2 mm^2 or less. This limit is based on the level that is specified in ASTM F963–11. As discussed in the preamble to the NPR (77 FR 53781), the flux index of a magnet is an empirical value developed by ASTM to estimate the attraction force of a magnet. The flux index limit of 50 kG^2 mm^2 was developed by ASTM, with CPSC staff's participation, to address injuries resulting from strong magnets that separate from toys. Because the magnets from toys involved in incidents had flux index measurements greater than 70 kG^2 mm^2,the ASTM working group chose a flux index of 50 kG^2 mm^2 as a cutoff because that value was significantly below the value for the magnets involved in incidents.

4. Test Procedure for Determining Flux Index—§ 1240.4

This section of the rule describes how to determine the flux index of magnets that are part of a magnet set. If the magnet set contains more than one shape or size of magnet, at least one of each shape and size is selected for testing. The flux index of the selected magnets is measured in accordance with the procedure set forth in sections 8.24.1 through 8.24.3 of ASTM F963–11, *Standard Consumer Safety Specification for Toy Safety.* The flux index of the magnet is calculated by multiplying the square of the magnet's surface flux density (in KGauss), by its maximum cross-sectional area (in mm^2). The ASTM standard uses a gauss meter and probe that measures the surface flux density at 0.015 inches (0.38 mm) above the magnet's surface. The area is measured at the largest cross-section of the magnet that is perpendicular to the axis of its magnetic poles.

In the NPR, we noted that the products at issue are typically aggregations of magnets, rather than individual magnets that often separate from toys. We also observed that when magnets are aggregated, their magnetic strength may increase. We requested comments on whether it may be desirable to develop a method for testing the strength of aggregated magnets in addition to the method for testing the strength of individual magnets. We received no comments proposing methodologies for testing the strength of an aggregation of magnets. Furthermore, because there are no magnet sets currently on the market with magnets that have a 50 kG^2 mm^2 flux index or less, we believe that the aggregation scenario is adequately addressed in the rule.

5. Findings—§ 1240.5

In accordance with the requirements of the CPSA, we have made the findings stated in section 9 of the CPSA. The findings are discussed in section N of this preamble.

G. Alternatives

The Commission has considered alternatives to reduce the risk of injury related to the ingestion of magnets contained in magnet sets. However, as discussed below, the Commission does not believe that any of these alternatives would adequately reduce the risk of injury.

1. Voluntary Recalls

Although most of the companies that manufacture or import magnet sets have voluntarily agreed to stop selling (and in some cases recall) these products, and several retailers have agreed to recall and stop sale, the Commission has been unsuccessful in negotiating voluntary recalls and stop sales with one company that continues to market magnet sets. Pursuing voluntary recalls with current and possibly future manufacturers and importers of magnet sets would be reactive and would entail waiting for new incidents to occur rather than preventing them. Moreover, recalls would not prevent new entrants into the market in the future; a rule will set requirements that all products must meet from the effective date of the rule going forward.

2. Voluntary Standard

Currently, there is no applicable voluntary standard in effect. Before publication of the NPR, a group of magnet set importers and distributors requested that ASTM International

develop a voluntary standard for the labeling and marketing of these products. Specifically, these companies requested the creation of a voluntary standard to: (1) Provide for appropriate warnings and labels on packages of these magnets sets; and (2) establish guidelines for restricting the sale of these magnet sets to children, by not selling to stores that sell children's products exclusively, and advising retailers not to sell the magnet sets in proximity to children's products. To date, ASTM has not formed a committee to consider the development of a voluntary standard for magnet sets.

Moreover, whether such a voluntary standard would be effective in reducing or eliminating the risk of injury associated with magnet sets is questionable. Despite companies' marketing and labeling their products in an attempt to limit children's exposure to magnets, ingestion incidents involving children have continued to occur; and labeling does not change the attractiveness of the product to children or the intrinsic play value of the magnet sets. From March 2010, when the firm with the largest share of the market undertook certain labeling enhancements and marketing restrictions, through June 2012, the Commission learned of 47 additional incidents of ingestion of magnets from magnet sets, 26 of which involved ingestion of that company's magnets. As discussed more fully in the next section of this preamble, we do not believe that warnings would adequately reduce the injuries associated with magnet sets.

We also note that Zen Magnets has announced its own ''voluntary standard'' for magnet sets requiring that:

- Customers must be 18 years of age or older to purchase magnets and that the sales location must have an age floor for persons 18 and older or 21 and older, or age must be otherwise verified by Government ID; and
- All stores must verbally remind customers to keep magnets away from mouths.

We do not consider a standard issued by one company to be a ''voluntary standard'' as that term is used in the CPSA. Moreover, the measures that Zen magnets announced would have the same limitations discussed above.

3. Warnings

A possible alternative to the rule would be to require warnings with or on magnet sets. As discussed in the NPR preamble and in response to comments set forth in section E of this preamble, it is unlikely that warnings on the packages of magnet sets would significantly reduce the ingestion-related injuries caused by high-powered magnets. Safety and warnings literature consistently identifies warnings as a less effective hazard-control measure than eliminating the hazard through design or guarding the consumer from a hazard. Warnings do not prevent consumer exposure to the hazard but rely on persuading consumers to alter their behavior in some way to avoid the hazard. With this product, warnings are particularly unlikely to reduce or eliminate the ingestion of these magnets. Warnings are especially unlikely to be effective among young children because children may lack the cognitive ability to appraise a hazard or appreciate the consequences of their own actions and may not understand how to avoid hazards effectively.

Although older children are better at appreciating the hazards described in a warning, peer acceptance and social influences can strongly influence adolescent behavior. Because adolescents have a tendency to test limits and bend rules, warnings about keeping the product away from children could have the unintended effect of making the product more appealing to some children. For example, warnings against specific uses, such as mimicking piercings, might actually encourage this behavior among older children. If children repeatedly use the product in this way, without ingesting the magnets, these children most likely will become convinced that the hazard is not especially likely, or is not relevant to them.

In the NPR, we noted that staff generally found the content of warnings accompanying magnet sets to be lacking in several ways. For example, the warnings often did not describe the incident scenarios prevalent among older children and adolescents, whom caregivers may not believe are likely to put magnets into their mouth. Warnings lacked detailed information that would allow consumers to understand how swallowing magnets differs from swallowing other small parts, or how magnets sticking together could pose a hazard because the magnets will not simply pass through the child's system. Without a clear, explicit, and accurate description of the nature of the hazard and its consequences, consumers may find the warning implausible. Moreover, even with enhanced warnings, consumers are unlikely to comply with the action recommended in the warning.

Even if warnings could effectively communicate the ingestion hazard, the consequences of ingesting magnets, and appropriate hazard-avoidance measures, warnings still may not be effective if consumers do not concur with the content of the warning. Warnings are particularly likely to be ineffective among caregivers of older children. Unless caregivers are convinced that their older child is likely to mimic lip, nose, or similar piercings, or perform other activities that might lead these adolescents to place magnets into their mouth or nose, caregivers may doubt that the warnings are relevant to their child, despite the warnings' assertions to the contrary.

As noted in the NPR preamble and in section E of this preamble, even if caregivers believe the warnings, several factors may limit compliance. Caregivers, particularly those with older children, might feel significant social pressure from children who are accustomed to using the magnet sets. Caregivers who own the product and attempt to heed the warnings might find it quite difficult to prevent their child's access to the magnets and still keep the product reasonably accessible for their own use.

The cost of compliance with warnings for these products is high. Caregivers may be reluctant to secure the product from a child after every use. Identifying an appropriate location to store the magnet sets may dissuade consumers from doing so, particularly for a product often marketed to be for ''stress relief.'' Caregivers may underestimate their child's abilities and place the product in locations that seem secure but that are still accessible to the child. All of these factors may lead caregivers to reject the warning message.

Based on these concerns about the likely ineffectiveness of warnings for magnet sets, we do not believe that warning labels would adequately reduce the risk of injury presented by these products.

4. Packaging Restrictions

Theoretically, magnet sets could be sold with special storage containers to reduce the likelihood that children would access the magnets. Possible storage might include a container that would clearly indicate when a magnet is missing from the set. Such a requirement might prevent injuries resulting from a small number of magnets being separated from a set without the owner being aware. However, many consumers may not use such containers because using them could require time to gather the magnets and put them in the container, or consumers may be reluctant to dismantle a shape or structure that took them time and effort to construct. Thus, the effectiveness of such special containers to reduce ingestions is doubtful. Finally, it is not clear that the

Commission would have the regulatory authority to issue a rule prescribing requirements for packaging, other than child-resistance requirements (discussed below).

Another alternative might be to require that magnet sets be sold in child-resistant packaging. Child-resistant packaging, also called ''special packaging,'' is packaging that is significantly difficult for children under five years of age to open or obtain a harmful amount of the substance. 15 U.S.C. 1471(4). The ability of such an approach to reduce ingestion injuries of magnets from magnet sets would be limited. Child-resistant packaging would not prevent teens and adolescents (and even some younger children) from opening the packaging. Additionally, the packaging would have to be secured after each use. According to the Division of Human Factors, it is unlikely that adults would accept child-resistant packaging for a product like the magnet sets because of the level of inconvenience involved in returning the magnets to the package.[6] Additionally, for the reasons described above, consumers may leave magnets out of their container.

5. Restrictions on Sales of Magnet Sets

Another possible alternative to address the hazard of children ingesting magnets from magnet sets might be to limit the places where magnet sets are sold, keeping magnet sets away from toy stores, children's sections of stores, and other such locations. Sales limitations or requirements for strong warnings might also be required on Web sites that offer magnet sets for sale on the Internet. However, these restrictions are unlikely to reduce ingestions significantly because children can access magnet sets from many sources other than stores. Moreover, sales restrictions are unlikely to deter teens. Finally, the Commission does not have the regulatory authority to impose such sales restrictions by rule.

6. Adoption of a Standard With Different Performance Requirements

Another alternative to the rule would be to establish a different set of requirements. For example, such requirements might allow a different flux index for magnet sets, different specifications regarding shapes and sizes of magnets within the scope of the standard, or some other criteria that have yet to be developed (but would not be as stringent as the rule requires). If different requirements would be effective, they could reduce the risk of injury associated with magnet sets, and at the same time, potentially allow the product to maintain the qualities that would facilitate use by adults. It is unclear, however, whether alternative requirements for the sizes and flux index of magnets would eliminate or substantially affect the physical qualities of the products that make them enjoyable for adults.

A competing concern is whether an alternative set of requirements could reasonably be expected to reduce or eliminate the risk of injury associated with magnet sets. Because the hazard presented by these magnet sets is ingestion by children, we are concerned that any requirements that allow magnets with a greater attractive force and permit sizes or shapes that could fit through the small parts cylinder would not address the risk of injury adequately.

As noted in Section E, some commenters suggest that, as an alternative to the rule, the Commission could require manufacturers to add an aversive (bittering) agent to the product. However, as discussed in the response to Comment 18, aversives are unlikely to be effective in deterring initial ingestion by young children because children frequently ingest unpalatable substances.

7. No Action

Another option for the Commission is to take no regulatory action to address the risk of injury posed by magnet sets. As the NPR preamble mentioned, it is possible that, over time, increased awareness of the hazard could result in some reduction in ingestions. The magnitude of any such reduction in incidents is uncertain. The Commission could rely entirely on enforcement activities, rather than regulatory action, to address the risk of injury posed by magnet sets. However, as discussed in the ''voluntary recall'' section above, several manufacturers/importers of magnet sets have refused to participate in any recall or stop sale of their products; and in any event, recalls and/or stop sales conducted by these companies would not prevent new entrants into the market in the future.

H. Final Regulatory Analysis

The Commission is issuing this rule under sections 7 and 9 of the CPSA. The CPSA requires that the Commission prepare a final regulatory analysis and publish the final regulatory analysis with the text of the final rule. 15 U.S.C. 2058(f). This section of the preamble presents the final regulatory analysis of the rule.

1. Need for and Description of the Rule

The CPSC has received information regarding injuries with, and hazards posed by, sets of small, powerful magnets. Some of these injuries have required surgical removal of individual magnets originally contained in the sets and ultimately ingested by children. Reported magnet ingestions have ranged from young children, who put the magnets in their mouths, to adolescents and teens, who experimented with the sensation of magnets (*e.g.,* on their braces), or paired magnets to mimic tongue or lip piercings. These behaviors have led to the accidental swallowing of the powerful magnets, with unexpected, and sometimes severe, medical consequences, including significant damage to the gastrointestinal tract (Inkster, 2012) and death. From January 1, 2009 through December 31, 2013, there were an estimated 2,900 possible magnet set, emergency department-treated ingestions. There was also one fatal incident in 2013 (Garland, 2014).

The final rule establishes a standard limiting the size and strength of magnets in a magnet set. The rule applies to any aggregation of separable, magnetic objects that is a consumer product intended, marketed, or commonly used as a manipulative or construction item for entertainment, such as puzzle working, sculpture building, mental stimulation, or stress relief.[7] Under the rule, magnet sets would not comply with the standard if: (1) The individual magnets are small enough to fit into the small parts cylinder (*e.g.,* a ball-shaped magnet with a diameter of less than 31.7 mm, or 1.25 inches); and (2) the individual magnets have a flux index of more than 50 kG^2 mm^2, as measured by the procedures for determining the flux index described in the toy standard. Because these requirements already apply to magnets used in products marketed as toys for children, the rule essentially extends the toy requirements to the subject magnet sets.

The current designs of magnet sets containing small powerful magnets of the type that are the subject of this regulatory proceeding (which are typically comprised of individual ball-shaped magnets with diameters of 5mm and, based on testing by CPSC staff, having flux index values in the range of 400–500) would not meet the

[6] Sedney, C.A., & Smith, T.P. (2012). *Human factors assessment of strong magnet sets.* CPSC memorandum to Jonathan D. Midgett, Project Manager, U.S. Consumer Product Safety Commission, Bethesda, MD.

[7] Although the definition of ''magnet set'' changed slightly from the NPR, and the rule extends to the individual magnets sold for use as or with a magnet set, these changes did not affect the scope of products considered in conducting the Final Regulatory Analysis.

requirements of the standard. To meet the requirements, the individual magnets would have to be much weaker (*i.e.,* have a flux index of 50 kG^2 mm^2 or less, rather than an index of 400 to 500); or the magnets would have to be much larger (*i.e.,* be at least 31.7 mm (1.25 inches) in diameter rather than 5 mm). Either requirement eliminates a distinctive product attribute and would limit greatly the magnet sets as candidates for manipulative novelty products. Magnets with a flux index of 50 kG^2 mm^2 or less may be too weak for building sculptures or too weak to be used in other construction activities; magnets with diameters of 1.25 inches or more would be too large to have any practical value in such activities.

Staff has identified magnet sets in the market, Liberty Balls, marketed by Assemble, LLC, that would meet the definition of magnet sets, would meet the performance standard, and might serve some of the uses of magnet sets that would not meet the standard. The Liberty Balls magnet sets consist of a set of eight large ball-shaped magnets. The Liberty Balls magnet sets consist of a set of eight large ball-shaped magnets selling for $30 to $40 per set. The Ball of Rights generally consists of a set of two large ball-shaped magnets selling for $10 to $13 per set. The balls in these sets are 33 mm (1.3 inches) in diameter, and consist of ferrite magnets, rather than rare earth materials (See *http://unitedweball.org/,* accessed February 25, 2014).

Even though these products satisfy the performance requirements of the rule, for purposes of the economic analysis, we do not consider any impacts due to the entry of Liberty Balls and Ball of Rights in the market because we do not consider these sets to be good substitutes for the subject magnet sets. To be considered a good or close substitute, we would need to observe that consumers, who would have purchased the subject magnet sets (if they had remained available at historical prices and quantities) are now, to a large degree, purchasing the Liberty Balls sets instead, and the available data suggest otherwise.[8] Moreover, Liberty Balls magnet sets are not marketed as a substitute for the smaller and powerful neodymium magnets sets. Rather, Liberty Balls apparently have been sold specifically to generate funds to defend the producer against the recently settled lawsuit with the CPSC (Helm, 2014).

Rather than develop a complying alternative that serves the same niche as the subject magnet sets, producers of magnet sets have opted to exit the market altogether. Although Liberty Balls comply with the standard, we base the benefit cost analysis presented below on the disappearance of the noncompliant magnet sets containing small powerful magnets from the market.

2. Description of the Product and Market

Magnet sets that would be affected by the scope of the rule are comprised of small, powerful magnetic balls, cubes, and/or cylinders that can be arranged in many different geometric shapes. These magnet sets were introduced in 2008, but 2009 marked the first year with significant sales to U.S. consumers.[9] Most magnet sets have been sold in sets of either 125 balls or sets of 216 to 224 balls; although some firms have sold just a few balls as extras or replacements, others have sold large sets of more than 1,000 magnetic balls.

Product information provided by marketers indicates that the most common magnet size is approximately 5 millimeters in diameter; although balls as small as about 3 millimeters have been sold, in addition to sets of larger magnet balls (perhaps 15 millimeters to 25 millimeters in diameter).[10] In addition to magnetic ball sets, sets of small magnetic cubes have also been sold, although magnetic cubes have comprised a relatively small share of the market. In 2012, the leading marketer of magnet sets also added to its desk toy product line small magnetic rods intended to be used with magnetic balls to make geometric shapes.

Based on information reviewed on product sales, including reports by firms provided to the Office of Compliance and Field Operations, the number of such magnet sets that were sold to U.S. consumers from 2009 through mid-2012 may have totaled about 2.7 million sets, with a value of roughly $50 million. This value reflects a combination of retail sales directly to consumers (through company Web sites and other Internet retail sites) and sales to retailers who marketed the products. A review of retail prices reported by importers, and observed on Internet sites during that period, suggested prices typically ranging from about $20 to $45 per set, with an average price of about $25. Larger sets of more than 1,000 individual magnets reportedly were sold at prices as high as $300, depending on the number of magnets and the type of packaging. Such larger sets only accounted for about 0.5 percent of all sets (and a little over 2 percent of all magnets) sold to consumers during the period from 2009 to mid-2012.

The small, powerful magnets to be affected by the rule are made of alloys of neodymium, iron, boron, or other rare earth metals. This composition has been confirmed in analyses of product samples by CPSC staff from the Directorate for Laboratory Sciences. The magnetized neodymium-iron-boron cores are coated with a variety of metals and other materials to make them more attractive to consumers and to protect the brittle magnetic alloy materials from breaking, chipping, and corroding. Nearly 100 percent of neodymium and other rare earth metals are now mined in China, which also reportedly holds close to a worldwide monopoly on the production of neodymium-iron-boron magnets (Dent, 2012). Based on available information, all of the small magnets used in magnet sets, as well as most of the finished and packaged products that would be subject to CPSC regulation, are produced by manufacturers located in China.[11]

a. Importers of Magnet Sets

As noted above, none of the magnets found in sets that are within the scope of the rule are produced domestically. Nearly all of the firms that have marketed magnet sets are believed to have imported them packaged and labeled for sale to U.S. consumers. Several Chinese manufacturers have the facilities and production capacity to meet the orders of U.S. importers.

The Directorate for Economic Analysis identified about 25 U.S. firms and individuals who imported magnet sets for sale in the United States in 2012. The combined sales of the top seven firms have probably accounted for

[8] Sales of Liberty Balls have not come close to matching the levels observed for the subject magnet sets (estimated at 800,000 sets and $20 million annually, and discussed below). Based upon available information, sales revenue for Liberty Balls appears to have amounted to about $200,000 during October and November 2013, or about $100,000 per month. (See *http://unitedweball.org/,* accessed February 25, 2014). By March 2014, reported sales revenue from Liberty Balls had increased to about $250,000 (Helm, 2014), suggesting that for December 2013 through February 2014, sales were only about $15,000 (($250,000–$200,000)/3) per month. By comparison, monthly sales for the subject magnet sets were about $1.7 million on average. (CPSC staff conducted no independent evaluation of the accuracy of these figures for Liberty Balls.)

[9] However, small neodymium-iron-boron magnets previously have been, and continue to be, marketed by firms such as magnet suppliers and distributors of educational products.

[10] One firm's larger magnet balls are reportedly made with cores of strontium ferrite ($SrO{\cdot}6Fe_2O_3$), rather than neodymium-iron-boron.

[11] One importer reported to a CPSC Compliance investigator that some of the magnet sets it sold and shipped to U.S. consumers were made from bulk magnets received from its supplier in China that the importer packaged for sale.

the great majority (perhaps more than 98%) of units sold since the product was introduced in 2008. One firm, Maxfield & Oberton Holdings, LLC, is believed to have held a dominant position in the market for magnet sets from its entry in the market in 2009, until it ceased operations late in 2012. That firm, and a few of the larger firms (including a firm based in Canada with a branch office in the United States), have marketed the products through accounts with retailers, in addition to selling directly to consumers on the Internet, using their own Web sites or other Internet shopping sites.

Some of the firms with smaller sales volumes reported to Compliance staff that they mainly marketed products (sourced from manufacturers in China) through Internet sales arrangements with Amazon.com, which held stock for them and processed orders. A review of the product listings of the Internet retailer found that several other firms had similar business models. Other U.S. firms and individuals have sold magnet sets they imported from China through Internet ''stores'' they maintain on eBay. In addition to products offered for sale by U.S. importers, consumers have also been able to purchase magnet sets directly from sources in Hong Kong or China, many of which marketed products through ''stores'' on eBay.[12]

b. Market Disruption Related to Other CPSC Actions on Magnet Sets

CPSC Compliance staff contacted 13 magnet set importers for corrective actions before the Commission published the NPR.[13] At staff's request in July 2012, 10 firms agreed to stop the manufacture, importation, distribution, and sale of high-powered, manipulative magnetic products of the types that would be subject to the rule. Three other firms did not stop selling the products (although one of these firms initially had agreed to cease sales voluntarily). The Commission voted to initiate administrative actions seeking a determination that certain magnet sets are a substantial product hazard, along with an order requiring the firms that import these products cease sales and offer refunds to customers.[14] The three firms that have been subject to the administrative complaints by the CPSC, and the 10 firms that have agreed to stop sales voluntarily, accounted for virtually all sales of the products during the period from 2009 to mid-2012. Additionally, the largest importer of magnet sets subject to the rule (one of the three firms sued in administrative complaints), Maxfield & Oberton Holdings, LLC, announced that it ceased operations, effective December 27, 2012. Another of the three firms sued in administrative complaints, Star Networks USA, LLC, agreed to stop further sales of magnet sets in July 2014, leaving just one major magnet set importer, Zen Magnets, LLC. As a result of these actions and events, sales of the subject magnet sets currently are dramatically lower than they were at the time of the enforcement actions.

3. Evaluation of the Rule

a. Societal Costs and the Potential Benefits

i. Estimated Societal Costs of Injuries

The purpose of the final rule is to prevent serious intestinal injuries that can result when children ingest two or more of the magnets from a subject magnet set (or one magnet and another metallic object). The final rule would establish a standard for magnet sets and individual magnets that are marketed or intended for use as parts of a magnet set. Distributing magnet sets and individual magnets intended for magnet sets that do not meet specified requirements would be prohibited. Therefore, a reduction in injuries would be the resulting benefit of the rule.

Baseline. Our analysis of the potential benefits of the rule focuses on injuries reported through the National Electronic Injury Surveillance System (NEISS), a probability sample of U.S. hospital emergency departments that can be used to provide national estimates of product-related injuries initially treated in U.S. hospital emergency departments. The expected benefits of a product safety regulation must be measured against a baseline representing the best assessment of how the market would operate and how products would be used in the absence of the intervention. In the case of the rule prohibiting the subject magnet sets, the baseline would represent the time period before the actions by which the CPSC: (1) Requested that importers and retailers stop selling the magnet sets; (2) initiated administrative actions against importers that refused to stop selling the magnet sets (each of which seeks an order directing the importer to offer refunds in exchange for the return of purchased magnet sets); (3) publicized corrective actions, whereby certain importers and retailers of magnet sets agreed to provide refunds to consumers in exchange for the return of purchased magnet sets; and (4) issued warnings to the public regarding the grave dangers that the subject magnet sets posed to children. Because CPSC compliance actions have significantly altered the state of the market, the environment before these actions occurred represents the best approximation of how the market would have operated in the absence of CPSC intervention and is the appropriate reference baseline for evaluating the impact of the rule. Consequently, although the Directorate for Epidemiology's hazard analysis described injuries involving magnets that occurred from 2009 through December 2013 (Garland, 2014), our analysis will be limited to the period from 2009 through June 2012, before the request to stop sales, administrative actions, recalls, and public warnings ensued.

Based on a review of incident narratives coded from emergency department medical records for magnet ingestion cases obtained from NEISS hospitals, the Directorate for Epidemiology staff has identified 86 ingestions of high-powered and/or ball-shaped magnets, which occurred from 2009 through June 2012. These incidents were determined to involve, or possibly involve, the magnets of interest. Although manufacturer or brand name information is rarely available in the medical records extracted for NEISS, nine of the 86 NEISS-reported cases (10.5%) mentioned a brand name of magnet sets that are the magnets of interest; 77 cases (89.5%) were determined possibly to have involved the magnets of interest because the case narratives included terms such as ''high powered,'' ''magnetic ball,'' ''magnetic marble,'' ''BB size magnet,'' or ''magnetic beads'' (Garland, 2014).

Injuries and Societal Costs. Based on the 86 NEISS-reported magnet cases, there were an estimated 2,138 injuries treated in U.S. hospital emergency departments from 2009 through June 2012. About 11 percent of these NEISS-reported cases were injuries requiring hospitalization, as opposed to the 89 percent that were treated and released. The benefits of the rule can be estimated as the reduction in the societal costs associated with the injuries that would be prevented by the rule. The

[12] More than 40 such stores shipping magnet sets directly from Hong Kong or China were identified in a brief review of product offerings on the Internet site in 2012.

[13] Although other importers were identified, these other importers were believed to sell so few magnet sets that staff did not have the resources to pursue these matters on a case-by-case basis against all known importers. Thus, targeting for corrective actions was limited to 13 firms believed to account for the largest portion of the market.

[14] For example, see the December 19, 2012, CPSC press release related to the administrative complaint filed against Star Networks (*http://www.cpsc.gov/en/Newsroom/News-Releases/2013/CPSC-Sues-Star-Networks-USA-Over-Hazardous-High-Powered-Magnetic-Balls-and-Cubes/*).

Directorate for Economic Analysis bases estimates of the societal costs of emergency department-treated magnet injuries on the CPSC's Injury Cost Model (ICM) (Miller et al., 2000).

The ICM is fully integrated with NEISS and provides estimates of the societal costs of injuries reported through NEISS. The major aggregated components of the ICM include: medical costs; work losses; and the intangible costs associated with lost quality of life or pain and suffering.[15]

Medical costs include three categories of expenditure: (1) Medical and hospital costs associated with treating the injury victim during the initial recovery period and in the long run, the costs associated with corrective surgery, the treatment of chronic injuries, and rehabilitation services; (2) ancillary costs, such as costs for prescriptions, medical equipment, and ambulance transport; and (3) costs of health insurance claims processing. Cost estimates for these expenditure categories were derived from a number of national and state databases, including the National Healthcare Cost and Utilization Project—National Inpatient Sample and the Medical Expenditure Panel Survey, both sponsored by the Agency for Healthcare Research and Quality.

Work loss estimates, based on information from the National Health Interview Survey and the U.S. Bureau of Labor Statistics, as well as a number of published wage studies, include: (1) The forgone earnings of parents and visitors, including lost wage work and household work, (2) imputed long term work losses of the victim that would be associated with permanent impairment, and (3) employer productivity losses, such as the costs incurred when employers spend time juggling schedules or training replacement workers. The earnings estimates were updated most recently with weekly earnings data from the Current Population Survey conducted by the Bureau of the Census in conjunction with the Bureau of Labor Statistics.

Intangible, or non-economic, costs of injury reflect the physical and emotional trauma of injury as well as the mental anguish of victims and caregivers. Intangible costs are difficult to quantify because they do not represent products or resources traded in the marketplace. Nevertheless, they typically represent the largest component of injury cost and need to be accounted for in any benefit-cost analysis involving health outcomes (Rice et al., 1989). The Injury Cost Model develops a monetary estimate of these intangible costs from jury awards for pain and suffering. While these awards can vary widely on a case-by-case basis, studies have shown them to be systematically related to a number of factors, including economic losses, the type and severity of injury, and the age of the victim (Viscusi, 1988; Rodgers, 1993). Estimates for the Injury Cost Model were derived from a regression analysis of about 2,000 jury awards in nonfatal product liability cases involving consumer products compiled by Jury Verdicts Research, Inc.

In addition to estimating the costs of injuries treated in U.S. hospital emergency departments and reported through NEISS, the Injury Cost Model uses empirical relationships between emergency department injuries and those treated in other settings (*e.g.,* physicians' offices, clinics, ambulatory surgery centers, and direct hospital admissions) to estimate the number, types, and costs of injuries treated outside of hospital emergency departments (Miller et al., 2000; Lawrence, 2013). Thus, the Injury Cost Model allows us to expand on NEISS by combining (1) the number and costs of emergency department injuries with (2) the number and costs of medically attended injuries treated in other settings to estimate the total number of medically attended injuries and their costs across all treatment levels.

Table 1 below provides *annual* estimates of the injuries and the societal costs associated with ''high-powered and/or ball-shaped magnet ingestions'' that involve, or possibly involve, the magnets that are the subject of the rule. As shown in Table 1, the 2009 through June 2012 NEISS estimates suggest an estimated annual average of about 610 emergency department-treated injuries, including 544 injuries that were treated and released and 66 injuries that required hospitalization. About 60 percent of these emergency department-treated ingestions involved children ages 4 through 12 years. Just over half of the magnet cases from the emergency departments of the hospitals that comprise the NEISS sample appear to have involved the ingestion of more than one magnet. Additionally, based on estimates from the ICM, there were another 319 injuries treated annually in locations other than hospital emergency departments.[16]

TABLE 1—ESTIMATED AVERAGE ANNUAL MEDICALLY ATTENDED INJURIES AND ASSOCIATED SOCIETAL COSTS FOR HIGH-POWERED AND/OR BALL-SHAPED MAGNET INGESTIONS THAT WERE DETERMINED TO INVOLVE, OR POSSIBLY INVOLVE, THE MAGNETS OF INTEREST, 2009–JUNE 2012

Injury disposition	Estimated number	Estimated societal costs ($ millions) *
Treated and Released from Hospital Emergency Department (NEISS)	544	11.4
Admitted to Hospital Through the Emergency Department (NEISS)	†66	8.6
Medically Treated Outside of Hospital Emergency Department (ICM)	319	8.6
Total Medically Attended Injuries	929	28.6

* In 2012 dollars.

† According to the Directorate for Epidemiology, the estimated number of hospital-admitted, emergency department-treated injuries is a not a reliable estimate because of the small number of cases upon which the estimate was based.

After including the injuries treated outside of hospital emergency departments, there was an estimated annual average of about 929 medically attended injuries involving ingestions of the magnets of interest. Based on the ICM, these injuries resulted in annual societal costs of about $28.6 million (in 2012 dollars) during the 2009 to June 2012 time period. The injury cost estimates differ from those presented in the preliminary regulatory analysis

[15] A detailed description of the cost components, and the general methodology and data sources used to develop the CPSC's Injury Cost Model, can be found in Miller et al. (2000).

[16] Although no deaths were reported during the baseline time period for this analysis, one death involving the subject magnets was reported in 2013.

because of an expansion of the baseline time period from 2009 through 2011 to 2009 through June 2012 and because of updates to the CPSC's Injury Cost Model (Lawrence, 2013). The injury cost estimates were also inflated from 2011 to 2012 dollars.

The average estimated societal costs per injury was about $27,000 for injuries treated in locations other than emergency departments (such as physicians' offices, clinics, ambulatory surgery centers, or direct hospital admissions); about $21,000 for injuries that were treated and released from emergency departments; and about $130,000 for injuries that required admission to the hospital for treatment. Medical costs and work losses (including work losses of caregivers) accounted for about 30 percent of these injury cost estimates, and the less tangible costs of injury associated with pain and suffering accounted for about 70 percent of the estimated injury costs.

Uncertainty. As noted in the preliminary regulatory analysis, there is uncertainty concerning these estimates. Some of the cases described as involving the magnets of interest that were included in Table 1 may not have involved the magnets that are the subject of the rule. As noted above, about 90 percent of the cases upon which the table was based were described as only possibly involving the magnets of interest because NEISS narratives are not required to list manufacturer or brand name. Hence, it is possible that Table 1 overstates the societal costs associated with the magnets that would be included in the rule.

On the other hand, in addition to the magnet cases upon which the table was based, there were also 230 NEISS cases (representing about 1,526 emergency department-treated injuries annually), in which the magnet type was classified as ''unknown or other.'' These cases included narratives that mentioned that a magnet was involved but presented insufficient information to classify the magnet type. Consequently, to the extent that the unknown magnet types involved magnets that would be covered by the rule, the Table 1 results would tend to understate the societal costs associated with the magnets subject to the rule.

ii. Estimated Benefits of the Rule

As noted above, the benefits of the magnet rule would be the reduction in the societal costs of the injuries that would be prevented. Because the rule will eliminate from the market all magnet sets involved in the ingestion injuries described above, all injuries that would have occurred in the absence of a rule would be prevented. Although no deaths involving magnet sets occurred during the time period covered by our analysis, we know of a magnet set related fatality that occurred in 2013. Thus, we anticipate that the rule would prevent future fatalities as well as injuries. However, if children, adolescents, and teens cannot play with or use the prohibited magnets, they could play with or use substitute products (including high-powered magnets intended for other uses [17]) that also may result in injury. Hence, the overall benefits of the rule should be measured as the net reduction in injuries and the concomitant reduction in societal costs that would result. Based on the injury estimates presented in Table 1, and given the absence of information on expected use and risks of alternative products or activities, the expected benefits of the rule might amount to about $28.6 million annually.

b. Potential Costs of the Rule

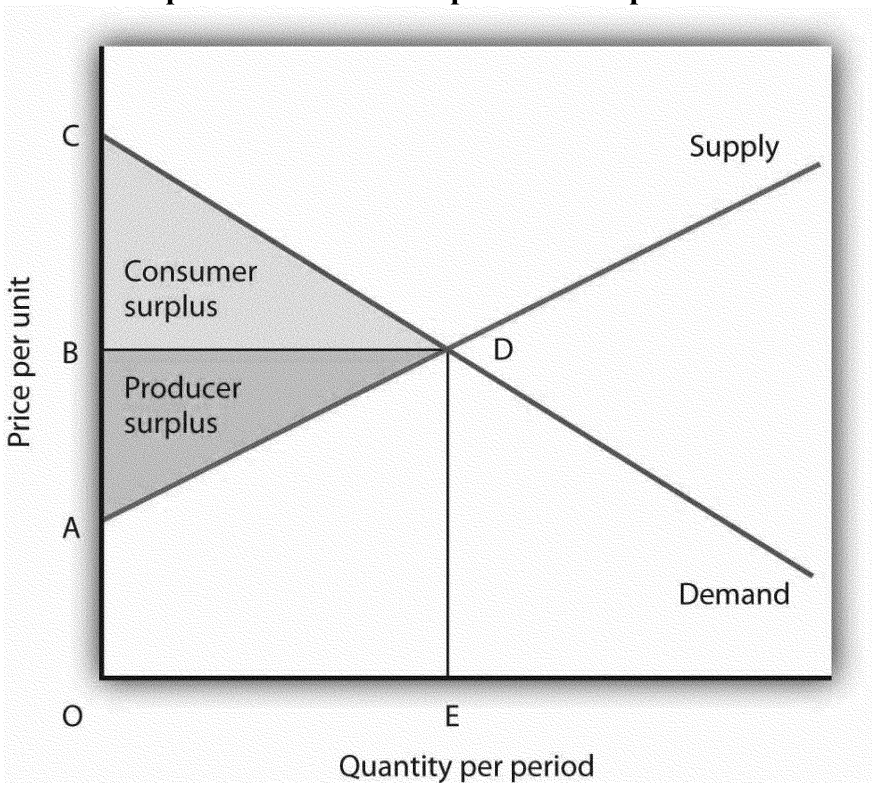
Both consumers and producers benefit from the production and sale of consumer products. The consuming public obtains the use value or ''utility'' associated with the consumption of products; producers obtain income and profits from the production and sale of products. Consequently, the costs of a rule that eliminates certain magnetic sets would consist of: (1) The lost use value experienced by consumers who would no longer be able to purchase magnets that do not meet the standard at any price; and (2) the lost income and profits to firms that could not produce and sell non-complying products in the future. The same baseline used in the benefits assessment, 2009 to June 2012, is used for the cost analysis.

i. Lost Utility to Consumers

First, consider the lost utility to consumers. We cannot estimate in any precise way the use value that consumers receive from these products, but we can describe use value conceptually. In general, use value includes the amount of: (1) Consumer expenditures for the product, plus (2) what is called ''consumer surplus.'' In the case of the magnet sets, given sales of about 800,000 sets annually during the 2009 to June 2012 time period, and assuming an average retail price of about $25 in 2012, consumer expenditures would amount to about $20 million annually in 2012 dollars. These expenditures represent the minimum value that consumers would expect to get from these products. It is represented by the area of the rectangle OBDE in the standard supply and demand graph below, where B equals $25, and E equals 800,000 units.

[17] Common commercial and industrial applications of small neodymium-iron-boron magnets include their use in holding systems, motors (DC, servo, linear, and voice coil), magnetic bearings, magnetic couplings, jewelry, welding clamps, oil filters, disc drives, loudspeakers, headphones, microphones, instrumentation, switches, and relays.

Figure 1. Supply and demand graph illustrating the concepts of consumer and producer surplus



The consumer surplus is given by the area of the triangle BCD under the graph's demand function and represents the difference between the market clearing price and the maximum amount consumers would have been willing to pay for the product. This consumer surplus will vary for individual consumers, but it represents a benefit to consumers over and above what they had to pay (McCloskey, 1982).[18] For example, although tickets to a concert or football game might sell for $100 each, some consumers who buy them for $100 would have been willing to pay $150 per ticket. In other words, they paid $100 and received benefits that they value at $150. Hence, each of these consumers would receive a consumer surplus of $50.[19]

In general, the use value of the magnet sets obtained by consumers is represented by the area of the trapezoid OCDE. However, the prospective *loss* in use value associated with the rule, which would prohibit certain magnet sets that do not comply with the rule, would amount to, at most, the area of the triangle representing the consumer surplus. This is because consumers would no longer be able to obtain utility from the prohibited product, but they would, nevertheless, still have the $20 million (represented by the rectangle OBDE) that they would have spent on magnet sets in the absence of a rule. Although consumers would no longer be able to purchase magnet sets, which would have been their first choice, they can use this money to buy other products providing use value.

We have no information regarding aggregate consumer surplus; and hence, no information on the amount of utility that would be lost from a magnet set rule. Although the magnet sets clearly provide ''utility'' to purchasers, magnet sets are not necessities. Consequently, the demand for magnet sets is probably not price inelastic, a factor that would tend to reduce estimates of utility losses.[20] Additionally, if the magnetic sets are ''faddish,'' they may not be the type of product that will be used intensely by consumers over long periods of time. However, if, for example, consumers who purchased the magnetic sets at an average price of $25 would have been willing to spend, on average, $35 per set, the lost utility from the magnet sets might amount to about $8 million on an annual basis (*i.e.,* $[\$35 - \$25] \times 800{,}000$ units annually).

Finally, we note that the loss in consumer surplus just described represents the maximum loss of consumer utility from the rule; the actual loss is likely to be lower. This is because consumers are likely to gain some amount of consumer surplus from products that are purchased as an alternative to those magnet sets that would no longer be available because of the rule. If, for example, there were close substitutes for the magnet sets that do not meet the standard (*e.g.,* desk toys that are almost as satisfying and similarly priced), the overall loss in consumer surplus (and, hence, the costs of the rule) would probably tend to be small. On the other hand, if there are no close substitutes, the costs of the rule would tend to be higher.

[18] The concept of consumer surplus is discussed in OMB's Circular A–4 (OMB, 2003) and has been applied in several CPSC staff analyses, including Tohamy (2006) and Rodgers (2004).

[19] If the above graph represents the market for tickets, the demand curve describes the quantity of tickets demanded at each price (*i.e.,* the quantity of tickets consumers are willing and able to purchase at each price). In this example, the $150 that the consumer would have been willing to pay for the ticket is represented on the demand curve at a point to the left of point D. The consumer surplus is given by the relevant point on the demand curve (*i.e.,* where price = $150), minus the market clearing price of $100.

[20] To say that the demand for a product is price ''inelastic'' means that the quantity demanded tends to be insensitive to changes in the price of the product. Gasoline is an example of a product with an inelastic demand. Consumers are not likely to reduce substantially their purchase of gasoline (at least in the short run), even if the price increases substantially.

Some alternative products might serve some of the same uses of the subject magnet sets. For example, consider the Liberty Balls mentioned earlier, which are comprised of large (1.3 inch) ferrite magnetic objects. Their size, weight, and relatively high price per ball make Liberty Balls unsuitable and impractical for use in most sculpturing and other construction activities for which the subject magnet sets are used. They might still be used by some for ''fidgeting,'' but there does not seem to be any unique attribute of this product that would cause a consumer to purchase Liberty Balls specifically for fidgeting; common objects, such as paper clips or ball bearings, could serve the same fidgeting purpose at a lower price.

Another possible alternative product discussed by the Directorate for Engineering Sciences (Amodeo, 2013) could be magnet sets comprised of individual magnets permanently connected by rods or other means, such that the resulting magnetic objects are not small parts. Such sets are marketed as children's toys because the individual pieces in the set do not fit into the small parts cylinder. Although these products have not been marketed for adults, and we have no evidence that they could be considered a good substitute for the subject magnet sets, if such sets could satisfy some consumers' needs in constructing geometric shapes, then the lost consumer surplus might be reduced.

Notwithstanding the availability of alternatives to the subject magnet sets, the rule will still result in some level of lost utility. By purchasing the products in question, rather than other products, consumers are revealing that they have a preference for the subject magnet sets that they believe are likely to provide them more utility than a substitute purchase.

ii. Lost Benefits to Producers

The lost benefits to firms resulting from a rule that effectively eliminates a product they produce are measured by a loss in what is called producer surplus. Producer surplus is a profit measure that is somewhat analogous to consumer surplus. Whereas consumer surplus is a measure of benefits received by individuals who consume products, net of the cost of purchasing the products, producer surplus is a measure of the benefits accruing to firms that produce and sell products, net of the costs of producing them. More formally, ''producer surplus'' is defined as the total revenue (TR) of firms selling the magnet sets, less the total variable costs (TVC) of production. Variable costs are costs that vary with the level of output and usually include expenditures for raw materials, wages, distribution of the product, and the like.[21]

In Figure 1, total revenue is given by the area OBDE, which is simply the product of sales and price. The total variable costs of production are given by the area under the supply function, OADE. Consequently, producer surplus is given by the triangle, ABD, which is the area under the market clearing price and above the supply function.

As described earlier, sales of the magnet sets averaged roughly 800,000 sets annually during the 2009 through mid-2012 time period, with an average retail price of about $25 per set in 2012. Thus, total industry revenues averaged about $20 million annually (*i.e.,* 800,000 sets × $25 per set) in 2012 dollars. Additional information provided by firms to the Office of Compliance and Field Operations suggests that the average import cost of the magnets to U.S. importers, a major variable cost, may have amounted to about $10 per set, or an average of about $8 million annually (*i.e.,* 800,000 sets × $10 import cost per set). We have no information on other variable costs associated with the production, packaging, marketing, and distribution of the magnet sets. However, it seems likely that variable costs would constitute a significant proportion of the remaining difference between revenues ($20 million) and import costs ($8 million). If we assume that variable costs amount to about half of the difference, lost producer surplus would amount to about $6 million.[22]

iii. Summary of Costs of the Rule

The costs of the rule, in terms of reduced benefits for firms and lost utility by consumers, are uncertain. However, based on annual sales estimates available for 2009 through mid-2012, these costs could amount to as much as $6 million in lost producer surplus and some unknown quantity of lost utility. The estimate of lost producer surplus differs from impacts estimated in the NPR (7.5 million, expressed as lost profits) because of a revised estimate of annual sales, and different assumptions regarding profit rates and variable costs.

c. Sensitivity of Results to Product Life Assumptions

Implicit in this analysis is the assumption that the expected useful life of the magnet sets is about 1 year. Because this product has only been in widespread consumer use since 2009, this assumption is made without extensive knowledge about the actual use of the magnetic sets by consumers. We consider magnet sets to be novelty products, which means for many consumers, they may lose much of their appeal quite quickly. Accordingly, we chose a one-year rather than a longer useful life even though the magnets may be physically durable products. Even if some of the products remain in homes or offices longer than a year, the risk of ingestion by children may be much higher in the first month or two after the magnet sets are purchased, when the appeal of the product is at its highest and the consumer actively uses or plays with the product frequently. Once novelty products lose their appeal, they are likely to be put away and stored indefinitely or perhaps even discarded.

However, we note that the results of our analysis are not particularly sensitive to this product life assumption. For example, had we assumed that the average product life was about 2 years, rather than 1 year, estimates of the number of sets in use at any given time would approximately double, reducing the estimated annual risk of injury, per magnet set in use (and hence, reduce estimated societal costs per set), by about half. However, this reduced estimate of annual societal costs would be offset by the fact that the sets remain in use for 2 years, rather than 1 year. Thus, annual benefits, per magnet set in use, would be about halved, but the present value of benefits would be accrued over 2 years, rather than 1 year. Consequently, even if we had doubled the assumed product life, the relationship between benefits and costs would have remained roughly the same. Estimated benefits would be slightly lower under a two year useful product life due to discounting second year benefits.

[21] Note that although producer surplus (PS) is a measure of profits, it is not the same as profits. Whereas PS = TR − TVC, profits (π) = TR − (TFC + TVC), where TFC represents total fixed costs (*i.e.,* those costs borne by the firm regardless of the level of output). If we substitute PS into the profit equation, and rearrange terms, we have PS = π + TFC. Thus, producer surplus is equal to profits, plus total fixed costs. In the case of the market for magnet sets, the fixed costs of production for American importers are small. The magnet sets were generally produced, packaged, and shipped from China and sometimes sent directly to the importer's point of sale. Even when the magnet sets were shipped directly to importers, most additional costs incurred by importers, such as shipping and marketing costs, would be considered variable. Consequently, in the case of the market for magnet sets, lost profits would be approximately equal to lost producer surplus.

[22] This value is lower than the value presented in the preliminary regulatory analysis, due to the use of more refined sales figures for the affected producers.

d. Alternatives to the Rule

There are several possible alternatives to the rule. We are unable to quantify either the costs or the benefits of these alternatives, in part because the requirements of such alternatives have not been specified. To estimate the potential costs of the alternatives, we would need a precise description of what the requirements would be. Moreover, even with this information, it would still be difficult to determine the expected injury reduction from the various alternatives.

Nevertheless, the costs of each of the alternatives discussed below are expected to be substantially lower than the costs of the rule. This is because, generally speaking, the alternatives would allow consumers and businesses to continue buying, selling, and using the magnet sets that would no longer be available under the rule. Similarly, the benefits of these alternatives, in terms of injury reduction, would also be expected to be lower than the benefits for the rule. This is because, under these alternatives, some children would continue to have access to the magnet sets.

The Commission may not have authority for some of the alternatives discussed. None of the alternatives was chosen because the expected injury reduction from each was believed to address the hazard inadequately. Comments on the NPR did not alter this decision.

i. Alternative Performance Requirements

As an alternative to the rule, the Commission could consider promulgating an alternative set of requirements that could reduce the risk of injury from magnet sets but not necessarily eliminate the risk. For example, some alternatives to the rule might include: Setting a different flux index for the magnets sold as manipulative desk sets; requiring different specifications for shapes and sizes of magnets within the scope of the standard; or setting forth some other criteria that have not yet been developed (but are not as stringent as in the final rule). If these alternative requirements led to the production of magnet sets with physical characteristics that appealed to consumers, the cost of the rule for both consumers and businesses would be reduced. Businesses would continue to be able to produce and sell magnet sets, and consumers would continue to be able to buy and use them. However, these alternative requirements would likely reduce the benefits of a rule: Magnets that present a risk of harm would still be available and some children would undoubtedly have access to them and be injured by them.

One practical question, however, is whether alternative requirements for the sizes and flux index of magnets would eliminate or substantially affect the physical qualities of the products that make them enjoyable for adults. Regarding the alternative size requirements, consumers can use magnet sets of 216 or more 5mm balls to make a variety of constructions. Larger individual magnets that would meet an alternative (that is smaller than the 1.25-inch diameter specified in the final rule) might be determined to reduce the risk associated with ingestions somewhat, but, depending upon their size, might make them unsuitable for many of the uses of the sets with smaller magnets.

Similarly, allowing a flux index greater than the 50 kG^2 mm^2 flux limit of the rule might improve the usefulness of the magnet sets in construction activities. However, given that the subject magnet sets have flux index values typically in the range of 400–500 for spherical magnets, the flux index limit might have to be increased substantially higher than the flux index limit of 50 kG^2 mm^2 to provide levels of satisfaction that are similar to those of the subject magnet sets. Moreover, a flux index limit of substantially more than 50 kG^2 mm^2 could, relative to the proposed rule, substantially increase the harms associated with the ingestion risk—the harms the rule is intended to prevent.

Another alternative might be to create specifications for the application of bittering agents on the magnets to make them less appealing to young children. However, the effectiveness of bittering agents in reducing magnet ingestions is questionable (Sedney & Smith, 2012).

Neither the costs, nor the benefits of these alternative sets of requirements are quantifiable with available information. The staff is reasonably certain that magnets with a flux index of less than 50 kG^2 mm^2 will substantially reduce the risk injury. However, the risk associated with flux indices greater than 50 kG^2 mm^2 but less than the indices of 400 to 500 for the subject magnet sets are unknown and cannot be estimated with available data. The staff is also reasonably certain that the risk of ingesting magnets is substantially reduced if the magnets are too large for the small parts container. However, the increased risk of ingestion with smaller sized magnets is unknown.

Require Safer Packaging

The Commission could require magnet sets to be sold with special storage containers that are fitted to the product so that consumers would be able to determine whether any of the magnets were missing from the sets. Such a requirement might prevent injuries resulting from a small number of magnets being separated from a set without the owner being aware. In reality, however, many consumers may not use such containers because using them could require time to form the magnets into a shape, such as a cube; or consumers might wish to keep the magnets out of their container to preserve a shape or structure that took time and effort to construct.

Alternatively (or in combination), the Commission could require the magnets to be sold in child-resistant packaging. The benefit of such an approach is the potential to reduce ingestion injuries. However, the benefits of this approach would be limited. Child-resistant packaging would not prevent teens and adolescents (and even some younger children) from opening the packaging. Additionally, the packaging would have to be secured after each use. According to the Division of Human Factors, it is unlikely that adults would accept child-resistant packaging for a product like the magnet sets because of the level of inconvenience involved in returning the magnets to the package (Sedney & Smith, 2012). Additionally, for the reasons described above, consumers may leave magnets out of their container.

The costs of this alternative would depend upon the packaging requirements but would be substantially less costly than the rule, which eliminates the subject magnet sets from the marketplace. It seems unlikely that the costs would amount to more than a dollar or so per magnet set, although these costs might be somewhat higher if child-resistant packaging was required. The benefits of requiring safer packaging are unknown, but based on the HF discussion above, the benefits may be relatively small if consumers would not use the packaging containers appropriately.

ii. Warnings

The Commission could require strong warnings on labels and on-product instructions designed to prevent the use of the magnet sets by children. Based on HF staff's examination, the ingestion warnings that currently accompany magnet sets are generally aimed at adults, but the warnings are deficient in their content. For example, some

warnings caution against children swallowing the magnets, but the warnings do not describe the incident scenarios. Some warnings refer to the propensity of swallowed magnets to stick to intestines, without referring to the presence of other magnets or metal objects. Other warnings refer to magnets sticking together or attaching to other metallic objects inside the body, but the warnings do not explain that the magnets can attract through the walls of the intestines and forcefully compress these tissues, resulting in serious injuries. According to HF staff, without detailed information in the warnings, consumers may not really understand how swallowing magnets differs from swallowing other small parts or how magnets sticking together could pose a hazard.

HF staff believes that it may be possible to develop warnings that could communicate the ingestion hazard, the consequences of ingestion, and how to avoid the hazard. To the extent that the subject magnets present a ''hidden'' hazard about which consumers are unaware, explicit and adequate warnings could reduce ingestions and allow adults to continue to enjoy the use of the product.

The costs of such warnings would most likely be small, and consumers could make informed decisions about the purchase and use of magnet sets. However, although HF staff believes warnings could be developed to communicate the hazard, HF staff also believes that injury reduction would be limited. They point out that avoiding the ingestion hazard requires consumers to keep the product away from all children in the incident age group, and while caregivers who read and understand the warnings may attempt to keep this product out of the hands of young children, HF staff doubts that many caregivers are likely to be so diligent about heeding the warning with older children and adolescents (Sedney & Smith, 2012). Also, HF staff doubts that caregivers will think that constant supervision is needed if they believe the sets have been properly secured or that their children are not aware of the sets (Sedney & Smith, 2013). As noted in the NPR (77 FR 53781), a corrective action in 2010, which included stronger warnings combined with provisions for controlling distribution of magnet sets, was found to be inadequate because of a subsequent increase in ingestion injuries involving the products. Consequently, warnings (combined with sales restrictions and other measures) have not been judged to address the risk posed by the subject magnet sets adequately.

iv. Restrictions on the Sale of Magnet Sets

Another lower-cost option the Commission could consider is to prohibit sales of magnet sets in toy stores, children's sections of general purpose stores, and near cash registers of stores that sell any children's products. The costs of this option would be lower than the rule because this would allow the magnet sets to be marketed to and used by consumers. Sales limitations or requirements for strong warnings might also be required on Web sites advertising the sale of magnets on the Internet.

The details of developing a set of sales limitations and requirements would need to be worked out, but the idea would be to make sure that magnet sets, to the extent possible, are not sold at locations where children are likely to be present. Sales requirements might also be combined with strong and explicit warnings that HF staff has suggested could be developed.

However, the benefits of this option are probably limited. Some parents would still allow their children (especially older children and adolescents) to play with the magnet sets, despite the warnings.[23] In addition, some children will get into the packaging, even if parents try to restrict the use of the desk toys.

v. Address Through Corrective Actions Rather Than Regulatory Action

The Commission could continue to address the hazard through corrective action plans. However, this approach may be inadequate because this approach is reactive and would entail waiting for new incidents to occur rather than preventing them.

vi. Take No Action

The Commission could determine that no rule is reasonably necessary to reduce the risk of ingestion injuries associated with small, powerful magnet sets. Under this alternative, future societal losses would be determined by the numbers of products in use, and other factors that affect the likelihood that young children, adolescents, and teens will ingest the magnets. Although there would be no costs, such a determination would not reduce injuries.

4. Summary

Based on reports to the CPSC, ingestions of small magnets contained in certain magnet sets have caused multiple, high-severity injuries that require surgery to remove the magnets and repair internal damage. Based on the NEISS cases identified by the Directorate for Epidemiology staff as involving high-powered and/or ball-shaped magnet ingestions, the estimated benefits of the rule might amount to about $28.6 million annually.

The costs of the rule consist of the reduced producer surplus for firms and lost utility by consumers, also are uncertain. Based on annual sales estimates available for 2009 through mid-2012, these costs could amount to as much as $6 million in lost producer surplus and some unknown quantity of lost utility.

There are alternative regulatory actions that might allow the magnet sets to continue to be marketed. For example, the Commission, by regulation, could issue alternative requirements; issue requirements for the packaging of the magnet sets (*e.g.,* develop requirements for child-resistant packaging); require warnings that describe explicitly the hazard and how to avoid it; and/or place limitations on how and where the magnet sets can be sold. These alternative actions—which might be considered alone, or in combination—would have varying levels of effectiveness, but all of them would be result in lower reductions in injuries associated with magnet ingestion.

I. Paperwork Reduction Act

The rule does not require manufacturers (including importers) to perform testing or require manufacturers or retailers to keep records. For this reason, the rule does not contain ''collection of information requirements,'' as that term is used in the Paperwork Reduction Act, 44 U.S.C. 3501–3520. Therefore, the rule need not be submitted to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. 3507(d) and implementing regulations codified at 5 CFR 1320.11.

[23] As noted in the NPR (77 FR 53781), one firm agreed to a corrective action in 2010, which included provisions for controlling distribution by agreeing to ask retailers who market products primarily to children to execute a Responsible Sellers Agreement prohibiting marketing and sales to children, as well as agreeing to stop the sale of magnet sets to retailers who market products exclusively to children. However, with a subsequent increase in ingestion injuries involving the products, Compliance began negotiation of corrective action plans with 11 of 13 magnet set importers that voluntarily agreed to cease the importation, distribution, and continued sale of their magnet sets, and administrative actions were initiated by the Commission against two firms that did not agree to cease sales voluntarily. By implication, sales restrictions (combined with warnings and other measures) have not been judged to address the risk posed by the subject magnet sets adequately.

J. Regulatory Flexibility Analysis

1. Introduction

The Regulatory Flexibility Act (RFA) requires that agencies review rules for their potential economic impact on small entities, including small businesses. Section 604 of the RFA calls for agencies to prepare a final regulatory flexibility analysis, describing the impact of the rule on small entities and identifying impact-reducing alternatives. The final regulatory flexibility analysis is to contain:

(1) A statement of the need for, and objectives of, the rule;

(2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the agency's assessment of those issues, and a statement of any changes made to the proposed rule as a result of such comments;

(3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a statement of any changes made in the final rule as a result of the comments;

(4) a description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(5) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for the preparation of the report or record; and

(6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other alternatives to the rule considered by the agency which affect the impact on small entities was rejected. Accordingly, staff prepared a final regulatory flexibility analysis, which is summarized below.

2. Statement of the Need for, and Objectives of, the Rule

The rule prohibits the sale or distribution in commerce of magnet sets and individual magnets intended to be used with or as magnet sets that do not meet the specific requirements described in section F of this preamble. The current designs of magnet sets of the type that became popular in recent years would not meet the rule's requirements. The CPSC has received information, described in section C of this preamble, regarding incidents with, and hazards posed by, sets of small, powerful magnets. According to the final regulatory analysis, there was an annual average of about 929 medically attended magnet ingestions that were defined as at least ''possibly of interest'' during the period from 2009 through June 2012. These ingestions resulted in societal costs of about $28.6 million per year.

The objective of the rule is to eliminate or reduce the risk of injury to consumers from the ingestion of one or more small powerful magnets that comprise the subject consumer products. Because the magnet sets that have been involved in incidents would not meet the rule's requirements, the rule will substantially reduce the future incidence and cost to society of ingestions of magnet sets.

3. Comments on the Initial Regulatory Flexibility Analysis

The Commission received comments from more than 5,000 people in response to the NPR. Many of the comments related to issues that have a bearing on the economic impacts of the proposed rule on small businesses. The Commission's responses to comments that address issues that were mentioned in the initial regulatory flexibility analysis (IRFA) are in included in Section E of this notice.

4. Small Entities Subject to the Rule and Possible Economic Impacts

The final rule would impact U.S. importers and retailers of magnet sets comprised of small, powerful magnets of the size and magnetic force proscribed by the rule. None of the magnet sets within the scope of the rule is produced domestically. All of the U.S. firms that have marketed the products are believed to have imported them from manufacturers in China. The one remaining firm that currently imports magnet sets is a small business under U.S. Small Business Administration (SBA) size standards (SBA, 2012).

Based on information reviewed on product sales, including reports by firms to the Office of Compliance and Field Operations, the number of such magnet sets that were sold to U.S. consumers from 2009 through mid-2012 may have totaled about 2.7 million sets, with a value of roughly $50 million in 2012 dollars. This value reflects a combination of retail sales directly to consumers (through company Web sites and other Internet retail sites) and sales to retailers who market the products. A review of retail prices reported by importers and observed on Internet sites suggests prices typically ranged from about $20 to $45, with an average price of about $25 for magnet sets that commonly contain 216 to 224 magnets. Larger sets of more than 1,000 individual magnets have reportedly been sold at prices up to $300, depending on the number of magnets and the type of packaging.

We noted in the IRFA that the economic impact of the rule would be most severe for seven small importing firms, which account for the great majority (perhaps more than 98%) of units sold according to sales information provided to CPSC Compliance staff; and five of these importers reportedly derived most or all of their revenues from the sale of the magnet sets or related products. We judged that these firms could go out of business as a result of the rule. Two of the other leading importers of magnet sets apparently had fairly broad product offerings, which could lessen the severity of the economic impact of a rule. Nevertheless, we noted that the expected impacts of a final rule could also be significant for these small importers.

As discussed in section H.2.b. of this preamble, due to CPSC's enforcement actions, current sales of magnet sets are dramatically smaller than at the time of the enforcement actions. We are aware of only one major importer of magnet sets that remains active in the market. The rule will likely have an adverse impact on this remaining firm. That firm might go out of business, unless the firm successfully markets other products, including magnet sets that would comply.

5. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule

The rule does not contain any reporting or record keeping requirements.

6. Alternatives to the Rule

The Commission could pursue other options, including: Adopting an alternative set of requirements for the flux index or size of the magnets; requiring safer packaging; requiring warnings on the packaging and promotional materials; imposing restrictions on the locations where magnet sets can be sold; addressing the risk of injury presented by magnet sets through corrective actions; and taking no action at all. Each of these alternatives is addressed in Section G of this preamble and in the Final

Regulatory Analysis at Section H of this preamble. All of these alternatives would reduce the expected impact of the rule on small business. However, as discussed in Sections G and H of this preamble, these alternatives would not be expected to achieve the same injury reductions as the rule, and some of the suggested alternatives would be beyond the Commission's authority.

K. Environmental Considerations

CPSC rules establishing performance requirements are considered to ''have little or no potential for affecting the human environment,'' and environmental assessments are not usually prepared for these rules (16 CFR 1021.5 (c)(1)). This rule falls within the categorical exemption.

L. Executive Order 12988 (Preemption)

As required by Executive Order 12988 (February 5, 1996), the CPSC states the preemptive effect of the rule as follows:

The rule is promulgated under authority of the CPSA. 15 U.S.C. 2051–2089. Section 26 of the CPSA provides that ''whenever a consumer product safety standard under this Act is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as the performance, composition, contents, design, finish, construction, packaging or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal Standard.'' 15 U.S.C. 2075(a). Upon application to the Commission, a state or local standard may be excepted from this preemptive effect, if the state or local standard: (1) Provides a higher degree of protection from the risk of injury or illness than the CPSA standard, and (2) does not unduly burden interstate commerce. In addition, the federal government, or a state or local government, may establish and continue in effect a nonidentical requirement that provides a higher degree of protection than the CPSA requirement for the hazardous substance for the federal, state, or local government's use. 15 U.S.C. 2075(b).

Thus, with the exceptions noted above, the magnet set requirements would preempt nonidentical state or local requirements for magnet sets designed to protect against the same risk of injury.

M. Effective Date

The Commission has determined that the rule will become effective 180 days from publication of the final rule in the **Federal Register** and will apply to all magnet sets imported into or otherwise distributed in the United States that are manufactured or imported on or after that date. The CPSA requires that consumer product safety rules take effect not later than 180 days from their promulgation, unless the Commission finds there is good cause for a later date. 15 U.S.C. 2058(g)(1). In the NPR, the Commission proposed that the rule would take effect 180 days after promulgation of a final rule. The Commission received no comments on the proposed effective date.

N. Findings

The CPSA requires the Commission to make certain findings when issuing a consumer product safety standard. Specifically, the CPSA requires that the Commission consider and make findings about the degree and nature of the risk of injury; the number of consumer products subject to the rule; the need of the public for the rule and the probable effect on utility, cost, and availability of the product; and other means to achieve the objective of the rule, while minimizing the impact on competition, manufacturing, and commercial practices. The CPSA also requires the rule to be reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product; and issuing the rule must be in the public interest. 15 U.S.C. 2058(f)(3).

In addition, the Commission must find that: (1) If an applicable voluntary standard has been adopted and implemented, that compliance with the voluntary standard is not likely to adequately reduce the risk of injury, or compliance with the voluntary standard is not likely to be substantial; (2) that benefits expected from the regulation bear a reasonable relationship to the regulation's costs; and (3) that the regulation imposes the least burdensome requirement that would prevent or adequately reduce the risk of injury. *Id.* These findings are stated in § 1240.5 of the rule and are based on information provided throughout this preamble and the staff's briefing packages for the proposed and final rules.

O. Conclusion

For the reasons stated in this preamble, the Commission concludes that magnet sets and individual magnets that do not meet the requirements specified in this rule present an unreasonable risk of injury.

List of Subjects in 16 CFR Part 1240

Consumer protection, Imports, Infants and children, Labeling, Law enforcement, Incorporation by reference.

For the reasons stated in the preamble, the Commission amends Title 16 of the Code of Federal Regulations by adding part 1240 to read as follows:

PART 1240—SAFETY STANDARD FOR MAGNET SETS

Sec.

1240.1 Scope, purpose, and effective date.
1240.2 Definitions.
1240.3 Requirements.
1240.4 Test procedure for determining flux index.
1240.5 Findings.

Authority: 15 U.S.C. 2056 and 2058.

§ 1240.1 Scope, purpose, and effective date.

This part 1240, a consumer product safety standard, prescribes requirements for magnet sets, as defined in § 1240.2, and for individual magnets that are marketed or intended for use with or as magnet sets. These requirements are intended to reduce or eliminate an unreasonable risk of injury to consumers who ingest magnets that are part of magnet sets. This standard takes effect on April 1, 2015 and applies to all magnet sets and individual magnets, as defined in § 1240.2, that are manufactured or imported on or after that date.

§ 1240.2 Definitions.

(a) The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this part 1240.

(b) *Magnet set* means: Any aggregation of separable magnetic objects that is a consumer product intended, marketed or commonly used as a manipulative or construction item for entertainment, such as puzzle working, sculpture building, mental stimulation, or stress relief. Relevant factors in determining intended uses of a magnet set include, but are not limited to: The manufacturer's stated intent (such as on a label or Web site), if reasonable under the circumstances; the content and nature of advertising, promotion, marketing, packaging, or display relating to the product; and the uses for which the product is commonly recognized by consumers.

(c) *Individual magnet* means: An individual magnetic object intended or marketed for use with or as a magnet set as defined in paragraph (b) of this section.

§ 1240.3 Requirements.

Each magnet in a magnet set, and any individual magnet, that fits completely within the cylinder described in 16 CFR 1501.4 must have a flux index of 50 kG^2 mm^2 or less when tested in accordance with the method described in § 1240.4.

§ 1240.4 Test procedure for determining flux index.

(a) Select at least one magnet of each shape and size in the magnet set.

(b) Measure the flux index of each selected magnet in accordance with the procedure in sections 8.24.1 through 8.24.3 of ASTM F963–11, *Standard Consumer Safety Specification for Toy Safety,* approved on December 1, 2011. The Director of the **Federal Register** approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, PO Box 0700, West Conshohocken, PA 19428; telephone 610–832–9585; *www.astm.org.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or 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/code_of_federal_regulations/ibr_locations.html.*

§ 1240.5 Findings.

(a) *Degree and nature of the risk of injury.* (1) Based on a review of National Electronic Injury Surveillance System (NEISS) data, we have determined that an estimated 2,900 ingestions of magnets from magnet sets were treated in emergency departments during the period from January 1, 2009 to December 31, 2013, an average of about 580 ingestion incidents per year. From review of databases other than NEISS, we are aware of 109 reported incidents occurring from January 1, 2009 through June 24, 2014, involving the ingestion of magnets by children between the ages of 1 and 15. Of those 109 incidents, 83 involved the ingestion of high-powered, ball-shaped magnets that were contained in products that meet the above definition of ''magnet set,'' and 17 of those 109 incidents possibly involved ingestion of this type of magnet. Thus, 100 reported incidents of ingestions involved or possibly involved magnets from magnet sets. Hospitalization was required to treat 61 of the 100 incidents. In 81 of the 100 incidents, the magnets were ingested by children younger than four years old, or between the ages of four and 12 years.

(2) Once ingested, these strong magnets begin to interact in the gastrointestinal tract, which can lead to tissue death, perforations, and/or fistulas, and possibly intestinal twisting and obstruction. If left untreated, these injuries can lead to infection of the peritoneal cavity and other life-threatening conditions. The number of magnets swallowed increases the risk of attraction and injury; but as few as two magnets can cause serious internal damage in a very short time. The fact that many medical professionals do not appreciate the health consequences of magnet ingestion increases the severity of the risk because a doctor who is unfamiliar with these strong magnets may send a child home and expect the magnets to pass naturally. There are also health consequences to the treatment and surgery for removal of ingested magnets. There may be a risk of gastrointestinal bleeding; leakage of holes that were repaired; rupturing of resectioned bowels; temporary paralysis of the bowels; use of a colostomy bag; IV feeding initially, or for some longer time period; and compromise of nutrition and digestive function. Long-term health consequences can be severe, as well: loss of intestinal tissue; compromised nutrition absorption; adhesions and scarring of intestines; need for a bowel transplant; and possible impediments to fertility for girls. Even children who pass the magnets naturally and do not require surgery still need close observation by doctors and may undergo sequential x-rays, thus, exposing children to repeated dosages of radiation.

(b) *Number of consumer products subject to this part.* The market for magnet sets increased substantially from the time magnet sets were first introduced, through mid-2012. We estimate that the number of magnet sets that have been sold to U.S. consumers since 2009, the first year of significant sales, may have totaled about 2.7 million sets, representing a value of roughly $50 million. Because of CPSC enforcement activity and actions taken by firms since mid-2012, most firms have ceased selling the magnet sets. Actual sales since the end of 2012 by the firms remaining in the market are unknown but believed to be small. The remaining major importing firm that continues to sell the products is estimated to hold a market share of less than 2 percent of pre-enforcement action sales. The approximate number of products subject to this part (in terms of unit sales) could be fewer 25,000 sets per year.

(c) *The need of the public for magnet sets and the effects of this part on their utility, cost, and availability.* (1) We cannot estimate precisely the use value that consumers receive from magnet sets. In general, use value would be the amount of money that consumers expend on the product, plus the consumer surplus (*i.e.,* the difference between the market price and the maximum amount consumers would have been willing to pay for the product). Magnet sets of the type that have been involved in incidents would not comply with this part. Therefore, consumers will no longer be able to obtain utility from these magnet sets. Although magnet sets clearly provide utility to purchasers, magnet sets are not necessities. Products that meet the requirements of this part might be developed that would serve some of the purposes of magnet sets. This part would continue to allow strong magnets for other uses, such as commercial or industrial uses.

(2) Individual magnets that are intended or marketed for use with or as magnet sets also must comply with the requirements of this part. The Commission is aware that firms selling magnet sets have offered individual magnets. To avoid firms circumventing the rule by selling individual magnets that are nevertheless intended or marketed to be used as magnet sets, this part covers such individual magnets. Individual magnets sold for other uses are not subject to this part. Thus, this part does not affect the need for, utility, or availability of individual magnets that are sold for uses other than as magnet sets.

(d) *Other means to achieve the objective of this part, while minimizing the impact on competition and manufacturing.* (1) The Commission considered various alternatives to the requirements specified in this part. This part requires that if a magnet set contains a magnet that fits within the small parts cylinder that CPSC uses for testing toys, all magnets from that set must have a flux index of 50 kG^2 mm^2 or less. In addition, individual magnets intended or marketed for use with or as magnet sets must meet these requirements. We do not believe that options other than a rule establishing these requirements would sufficiently reduce the number and severity of injuries resulting from the ingestion of magnets from these magnet sets. The circumstances associated with this product limit the likely effectiveness of warning labels. Despite existing warning labels and market restrictions, ingestion incidents have continued to occur. Parents and caregivers may not

appreciate the hazard associated with magnet sets. Accordingly, parents and caregivers will continue to allow children access to the product. Children may not appreciate the hazard and will continue to mouth the items, swallow them, or in the case of young adolescents and teens, use the magnets to mimic body piercings. Once the magnets are removed from their carrying case, the magnets bear no warnings to guard against ingestion or aspiration; the small size of the individual magnets precludes the addition of any warning. Because individual magnets from magnet sets are shared easily among children, many end users of the product are likely to have had no exposure to any warning.

(2) The Commission has considered other alternatives to reduce the risk from magnet sets: alternative performance requirements, such as setting a different flux limit or requiring bittering agents; safer packaging requirements, such as requiring a specific design for storage containers or requiring child resistant packaging; sales restrictions; continued corrective actions; and taking no action. Some of these alternatives may not be within the Commission's authority. Although each of the alternative actions would have lower costs and less impact on small business, none is likely to significantly reduce the injuries associated with ingestion of magnets from magnet sets.

(e) *Unreasonable risk.* (1) As stated in paragraph (a) of this section, according to NEISS, an estimated 2,900 ingestions of magnets from magnet sets were treated in emergency departments during the period from January 1, 2009 to December 31, 2013, an average of about 580 ingestion incidents per year. From sources other than NEISS, CPSC has reports of 100 incidents of ingestions that involved or possibly involved magnets from magnet sets, including one fatality.

(2) For the regulatory analysis, we considered the period of time, 2009 through June 2012, before CPSC's compliance activities affected the market. We identified 86 ingestions of high-powered and/or ball-shaped magnets, which occurred from 2009 through June 2012 reported through NEISS. These incidents were determined to involve, or possibly involve, magnet sets. Based on these 86 incidents, we have determined that an estimated 2,138 ingestions of magnets from magnet sets were treated in emergency departments from January 1, 2009 to June 2012. About 11 percent of the victims of these ingestion incidents required hospitalization, as opposed to victims who were treated and released. The 2009 through June 2012 NEISS estimates suggest an estimated *annual* average of about 610 emergency department-treated injuries, including 544 injuries that were treated and released and 66 injuries that required hospitalization. About 60 percent of these emergency department-treated ingestions involved children ages 4 through 12 years. Additionally, based on estimates from the Commission's injury cost model (ICM), there were another 319 injuries treated annually in locations other than hospital emergency departments (such as doctors' offices, clinics, ambulatory surgery centers, or direct hospital admissions).

(3) After including the injuries treated outside of hospital emergency departments, there was an annual average of about 929 medically attended injuries involving ingestions of magnets that were defined as at least ''possibly of interest'' during the period from 2009 through June 2012. Injuries resulting from such ingestions of magnets can be severe and life threatening. The risk posed by these magnets may not be appreciated by children or caregivers, who may assume, mistakenly, that the consequences of ingesting magnets would be similar to ingesting any other small object. However, once ingested, these strong magnets do not pass naturally. Rather, these magnets are mutually attracted to each other and exert compression forces on the trapped gastrointestinal tissue.

(4) We estimate that these injuries resulted in annual societal costs of about $28.6 million (in 2012 dollars) during the 2009 through June 2012 time period. The average estimated societal costs per injury was about $27,000 for injuries treated in locations other than emergency departments (such as physicians' offices, clinics, ambulatory surgery centers, or direct hospital admissions); about $21,000 for injuries that were treated and released from emergency departments; and about $130,000 for injuries that required admission to the hospital for treatment. Preventing these injuries would be the expected benefit resulting from the rule.

(5) The costs of the rule would consist of the lost producer surplus to firms that produce and sell magnet sets, plus the lost use value that consumers would experience when magnet sets that do not comply with the rule are no longer available. Sales of magnet sets averaged roughly 800,000 sets annually during the 2009 through mid-2012 time period, with an average retail price of about $25 per set in 2012. Thus, total industry revenues averaged about $20 million annually (*i.e.,* 800,000 sets × $25 per set) in 2012 dollars. The average import cost of the magnet sets to U.S. importers, a major variable cost, may have amounted to about $10 per set, or an average of about $8 million annually (*i.e.,* 800,000 sets × $10 import cost per set). We estimate other variable costs associated with the production, packaging, marketing, and distribution of the magnet sets would constitute a significant proportion of the remaining difference between revenues ($20 million) and import costs ($8 million). If we assume that variable costs amount to about half of the difference, lost producer surplus would amount to about $6 million.

(6) Thus, we estimate costs of the rule to be about $6 million in lost producer surplus and some unknown quantity of lost utility. Considering the injuries associated with magnet sets—and the resulting societal costs, balanced against the likely impact that the rule would have on firms producing and selling the product, and on consumers who would lose the utility of the product—we conclude that magnet sets pose an unreasonable risk of injury and that the rule is reasonably necessary to reduce that risk.

(f) *Public interest.* The regulations in this part are in the public interest because they would reduce deaths and injuries associated with magnet sets in the future. A rule establishing requirements that would eliminate magnet sets of the type that have been involved in incidents will mean that children will have less access to this product, thereby reducing the number of incidents of children swallowing the magnets and the resulting cost to society of treating these injuries.

(g) *Voluntary standards.* Currently, there is no voluntary standard for magnet sets, nor any activity to develop a voluntary standard for magnet sets.

(h) *Relationship of benefits to costs.* (1) Based on reports to the CPSC, ingestions of small magnets contained in magnet sets have caused multiple, high-severity injuries that require surgery to remove the magnets and repair internal damage. Based on the information discussed in paragraph (e) of this section, we estimate that the benefits of this part might amount to about $28.6 million annually.

(2) The costs of the rule, in terms of reduced profits for firms and lost utility by consumers, also are uncertain. However, based on annual sales estimates available for the 2009 through June, 2012, study period, these costs could amount to about $6 million in lost producer surplus and some unknown quantity of lost utility.

(i) *Least burdensome requirement.* We have considered several alternatives to

this part. We conclude that none of these alternatives would adequately reduce the risk of injury. Alternative performance requirements might allow a different flux index for magnets contained in magnetic sets or require the addition of an aversive (bittering) agent to the magnets. Theoretically, these alternatives might allow continued production of some current products. However, it is unclear whether a different flux index would succeed in making products that have the desired physical qualities that make them sufficiently enjoyable to adults, and at the same time eliminate the characteristics that make these strong magnets hazardous to children. Furthermore, the effectiveness of aversive agents in reducing magnet ingestions is questionable. We have considered the possibility of requiring rigorous warnings on the products or in the instructions for the products. However, magnet sets currently and formerly on the market provide warnings concerning the potential hazard to children. Accordingly, it is unlikely that even strengthened warnings would substantially reduce the incidence of magnet ingestions. This is particularly true for incidents involving older children and adolescents. Moreover, children who are old enough to understand the warnings may still not abide by them. Some type of sales restriction, limiting the location where magnet sets could be sold, might be possible. However, even with restrictions on sales, ingestions are still likely to occur as children encounter these magnets in the home, at school, or other locations where adults have brought them and made them available to children. The Commission could continue to address the hazard from magnet sets through corrective actions, *i.e.,* recalls of the product. However, these actions would not prevent additional companies from entering the market and importing magnet sets into the country in the future. The Commission also has the option of taking no regulatory action. Although it is possible that, with increased awareness of the hazard over time, some reduction in ingestions could occur, the magnitude of any such reduction in incidents is uncertain and would likely be smaller than those resulting from the requirements of this part.

Dated: September 26, 2014.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2014–23341 Filed 10–2–14; 8:45 am]

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Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Western Distinct Population Segment of the Yellow-billed Cuckoo *(Coccyzus americanus);* Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8– ES–2013–0104; 4500030113]

RIN 1018–AY53

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Western Distinct Population Segment of the Yellow-billed Cuckoo (Coccyzus americanus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened status under the Endangered Species Act of 1973 (Act), as amended, for the western distinct population segment (DPS) of the yellow-billed cuckoo (*Coccyzus americanus*), a species located from the western portions of the United States, Canada, and Mexico. This final rule implements the Federal protections provided by the Act for this DPS.

DATES: This rule is effective November 3, 2014.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and at the Sacramento Fish and Wildlife Office at *http://www.fws.gov/sacramento/.* Comments and materials received, as well as supporting documentation used in the preparation of this rule, will be available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825; by telephone 916–414– 6600; or by facsimile 916–414–6712.

FOR FURTHER INFORMATION CONTACT: Jennifer Norris, Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), 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, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule. On October 3, 2013, we published in the **Federal Register** a proposed rule (78 FR 61621) to list the western DPS of the yellow-billed cuckoo (hereafter referred to as western yellow-billed cuckoo). This rule finalizes our determination for listing the western yellow-billed cuckoo.

The basis for our action. Under the Endangered Species 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.

We have determined that the western yellow-billed cuckoo meets the definition of a threatened species and is likely to become endangered throughout its range within the foreseeable future, based on the immediacy, severity, and scope of the threats to its continued existence. These include habitat loss associated with manmade features that alter watercourse hydrology so that the natural processes that sustained riparian habitat in western North America are greatly diminished. Loss and degradation of habitat has also occurred as a result of livestock overgrazing and encroachment from agriculture. These losses are exacerbated by the conversion of native habitat to predominantly nonnative vegetation. Habitat loss results in the additional effects associated with small and widely separated habitat patches such as increased predation and reduced dispersal potential. This threat is particularly persistent where small habitat patches are in proximity to human-altered landscapes, especially agricultural fields, resulting in the potential for pesticides to poison individual western yellow-billed cuckoos and reduce their prey base.

What the rule does. We are making a final listing determination regarding the western distinct population segment of the U.S. population of the yellow-billed cuckoo pursuant to the Endangered Species Act. This species occurs in the western United States, Canada, and Mexico. The western U.S. States include Washington, Idaho, Montana, Oregon, California, Nevada, Wyoming, Utah, Colorado, Arizona, New Mexico, and Texas. This document adds the western DPS of the yellow-billed cuckoo (*Coccyzus americanus*) as a threatened species to the List of Endangered and Threatened Wildlife (50 CFR 17.11(h)).

Peer review and public comment. We sought comments from independent specialists to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our listing proposal. We also considered all other comments and information we received during the three open comment periods. We have considered and incorporated any pertinent information from all comments and information we received into this final rule. See the **Summary of Comments and Recommendations** section, below, for a summary of comments we received on the proposed listing.

Previous Federal Actions

On October 3, 2013, the proposed rule to list the western yellow-billed cuckoo as a threatened species under section 4 of the Act (16 U.S.C. 1531 *et seq.*) was published in the **Federal Register** (78 FR 61621). This rule finalizes the Federal action for this species. For additional information on previous Federal actions for the western yellow-billed cuckoo, please see the 12-month petition finding (66 FR 38611; July 25, 2001) and proposed listing rule (78 FR 61621; October 3, 2013).

We proposed critical habitat for the western DPS of the yellow-billed cuckoo on August 15, 2014 (79 FR 48547).

Background

In this section of the final rule, it is our intent to discuss only those topics directly relevant to the listing of the western yellow-billed cuckoo as a threatened species. Please refer to the proposed listing rule for the western yellow-billed cuckoo for detailed background and species information (78 FR 61621; October 3, 2013).

Species Information

The yellow-billed cuckoo (*Coccyzus americanus*) is a member of the avian family Cuculidae and is a Neotropical migrant bird that winters in South America and breeds in North America. Yellow-billed cuckoos spend the winter in South America, east of the Andes, primarily south of the Amazon Basin in southern Brazil, Paraguay, Uruguay, eastern Bolivia, and northern Argentina (Ehrlich *et al.* 1992, pp. 129–130; American Ornithologists' Union (AOU) 1998, p. 247; Johnson *et al.* 2008b, pp. 18–29). The breeding range of the entire species formerly included most of North America from southeastern and western Canada (southern Ontario, Quebec, and southwestern British Columbia) south throughout the continental United States to the Greater Antilles and

northern Mexico (AOU 1957, pp. 269–270; AOU 1983, p. 284; AOU 1998, p. 247). Currently, the species no longer breeds in western Canada and the northwestern continental United States (Washington, Oregon, and Montana).

Adult yellow-billed cuckoos have a fairly stout and slightly down-curved bill; a slender, elongated body with a long-tailed look; and a narrow yellow ring of colored, bare skin around the eye. The plumage is loose and grayish-brown above and white below, with reddish primary flight feathers. The tail feathers are boldly patterned with black and white below. They are a medium-sized bird about 12 inches (in) (30 centimeters (cm)) in length, and about 2 ounces (oz) (60 grams (g)) in weight. The bill is blue-black with yellow on the basal half of the lower mandible. The legs are short and bluish-gray. All cuckoos have a zygodactyl foot with two toes pointing forwards and two toes pointing backwards. Juvenile yellow-billed cuckoos resemble adults, except the tail patterning is less distinct and the lower bill has little or no yellow. Males and females differ slightly and are indistinguishable in the field (Hughes 1999, pp. 2–3).

Typically a secretive and hard-to-detect bird, adult yellow-billed cuckoos have a distinctive ''kowlp'' call, which is a loud, nonmusical series of notes that slows down and slurs toward the end. Yellow-billed cuckoos advertise for a mate using a series of soft ''cooing'' notes, which they give at night as well as during daytime. Both members of a pair use a soft knocking call as a contact or warning call near the nest (Hughes 1999, pp. 8–9). Please refer to the October 3, 2013, proposed listing rule (78 FR 61623–61642) for additional species information.

Taxonomy

Recent research on yellow-billed cuckoo genetics using mitochondrial DNA did not find any fixed genetic differences between eastern and western yellow-billed cuckoos (Farrell 2013, pp. 165–170). The author concluded that the separation into distinct subspecies may be too recent to be expressed in a single mitochondrial gene and recommended future studies using next-generation sequencing techniques. Avian geneticist Janice Hughes, Ph.D., a peer reviewer of the proposed listing rule, concluded that close examination of the DNA studies conducted to date on cuckoos infers a deeper genetic divergence between western and eastern cuckoos that with further analysis would likely support division of the yellow-billed cuckoo into two subspecies. She indicated that genetic markers used in all three previously conducted genetics studies evolve too slowly to reveal genetic structure within the species. She recommended that future studies use microsatellite techniques because they would be more informative to a study of DNA at the subspecies level. The existing DNA studies, however, show that western yellow-billed cuckoos have developed unique genetic haplotypes not present in eastern cuckoos and that these are reflected in phenotypic (outwardly visible) divergence that has been observed between eastern and western yellow-billed cuckoos. Please refer to the October 3, 2013, proposed listing rule (78 FR 61624–61645) for a more detailed discussion of information on taxonomy for the species.

Distinct Vertebrate Population Segment Analysis

Under the Act, we must consider listing any species, subspecies, or, for vertebrates, any DPS of these taxa if there is sufficient information to indicate that such action may be warranted. To implement the measures prescribed by the Act and its Congressional guidance, we (along with the National Marine Fisheries Service) developed policy that addresses the recognition of DPSs for potential listing actions (61 FR 4722; February 7, 1996). The policy allows for more refined application of the Act that better reflects the biological needs of the taxon being considered, and avoids the inclusion of entities that do not require its protective measures.

Before we can evaluate whether a given population segment is a DPS under the Act, we must first determine if any population segments exist for the vertebrate species. As discussed in the *Taxonomy* section of the proposed rule (78 FR 61621; October 3, 2013), much of the available scientific information supports the yellow-billed cuckoos that nest in western North America as a biologically separate population segment.

To establish the range of the population segment under consideration, we used the area occupied by the western yellow-billed cuckoo (the subspecies) originally defined by Ridgway (1887, p. 273) and later refined by other researchers (AOU 1957, pp. 269–270; Oberholser and Kincaid 1974, pp. 434–435; Hughes 1999, Figure 1). After careful consideration of other possible population segment configurations, we determined that the Continental Divide (generally the crest of the Rocky Mountains based on watershed boundaries), the watershed divide between the Rio Grande and Pecos River, and the Chihuahuan Desert in Mexico was the best division between eastern and western populations. The area that we are considering occupied by the potential western DPS for the yellow-billed cuckoo is closely aligned with the traditionally defined range of the western yellow-billed cuckoo subspecies as partially described in the July 25, 2001, 12-month finding (66 FR 38611). Our goal is to determine if this western population meets the criteria of a DPS and, if so, whether the range boundaries identified in the literature are appropriate for the boundary of the DPS. This DPS analysis is based solely on the range during the breeding season because the migration route and winter range of western yellow-billed cuckoos are poorly known.

The geographical breeding range of the yellow-billed cuckoo in western North America includes suitable habitat within the low- to moderate-elevation areas west of the crest of the Rocky Mountains in Canada, Mexico, and the United States, including the upper and middle Rio Grande, the Colorado River Basin, the Sacramento and San Joaquin River systems, the Columbia River system, and the Fraser River. In Mexico, the range includes the Cape Region of Baja California Sur, and river systems in the Mexican States of Sonora, Sinaloa, western Chihuahua, and northwestern Durango. Eastern yellow-billed cuckoos (*Coccyzus americanus americanus*) breed east of the Rocky Mountains; north to North Dakota and southern Ontario, Canada; south to eastern Mexico; and on the islands of the Caribbean (AOU 1957, pp. 269–270) (Figure 1).

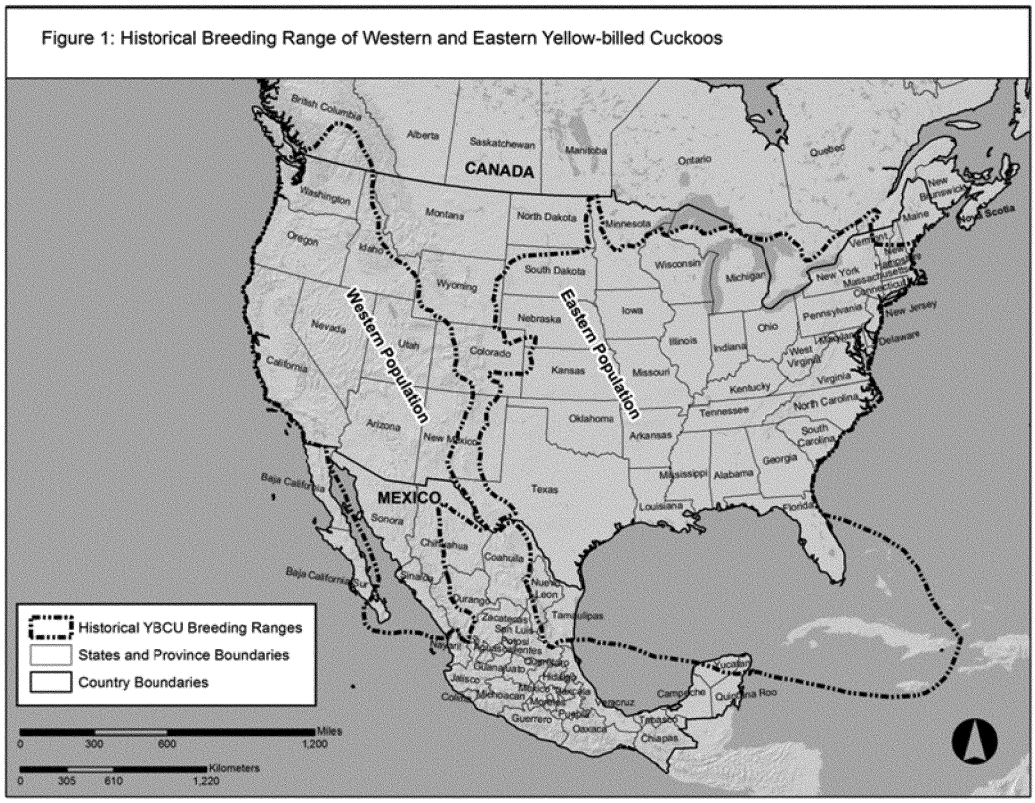

Figure 1. Historical Breeding Range of Eastern and Western Yellow-billed Cuckoos based on American Ornithological Union's 1957 Checklist.

Under our DPS policy, three elements are considered in a decision regarding the status of a possible DPS as endangered or threatened under the Act. The elements are: (1) Discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing. In other words, if we determine that a population segment of a vertebrate species being considered for listing is both discrete and significant, we would conclude that it represents a DPS, and thus a ''species'' under section 3(16) of the Act, whereupon we would evaluate the level of threat to the DPS based on the five listing factors established under section 4(a)(1) of the Act to determine whether listing the DPS as an ''endangered species'' or a ''threatened species'' is warranted.

Below, we evaluate under our DPS policy whether the population segment of yellow-billed cuckoos that occurs in the western United States, northwestern Mexico, and southwestern Canada qualifies as a DPS under the Act.

Discreteness

Under our DPS Policy, a population segment of a vertebrate species may be considered discrete if it satisfies either of the following two conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which significant differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

The analysis of the population segment of the yellow-billed cuckoo in western North America is based on the first of those two conditions, the marked separation from other populations. From southwest British Columbia along the Canadian border to the southern end of the Sangre de Cristo Mountains in northern New Mexico, nesting yellow-billed cuckoos in western North America are separated from nesting yellow-billed cuckoos in eastern North America by the high-elevation zone of the Rocky Mountains. Yellow-billed cuckoos breed both east and west of the crest of the Rocky Mountains, where suitable habitat occurs (Johnsgard 1986, p. 201). We generally define the crest of the Rocky Mountains and Continental Divide as the high-elevation zone between the drainages flowing west and east in the United States, Canada, and Mexico, although some areas such as near the Sangre de Cristo Range in southern Colorado and northern New Mexico is east of the east-flowing Rio Grande River. The division between the western and eastern population segments spans a distance of about 2,200 miles (mi) (3,540 kilometers (km)) from southwest British Columbia near the Canadian border along the crest of the Rocky Mountains based on watershed boundaries, south along the Rio Grande-Pecos Rivers watershed divide to the United States-Mexico border in the Big Bend area of Texas, then into Mexico along the eastern and southern boundaries of the State of Chihuahua south to the southern border of the State of Durango and to the Pacific Ocean along the southern border of the State of Sinaloa. The distance of separation between breeding yellow-

billed cuckoos in the east and west varies along this division from 160 mi (257 km) to more than 400 mi (644 km), and consists entirely of areas of unoccupied, unsuitable habitat for breeding yellow-billed cuckoos. The one exception to this distance of separation is along the Rio Grande in Brewster County, in southwestern Texas, where eastern yellow-billed cuckoos breed as far west as Rio Grande Village and western yellow-billed cuckoos are found upstream along the river approximately 50 mi (80 km) to the west.

Yellow-billed cuckoos historically bred at the southern tip of Vancouver Island and in the Fraser River valley north to Kamloops in southwestern British Columbia, Canada (Bent 1940, p. 64; Campbell *et al.* 1990, p. 481). The species was apparently never common, with 23 records (18 specimen and 5 sight records) between 1881 and 1927. Two of these observations were of pairs believed to be nesting but not confirmed. Since the 1920s, the species has been recorded five times in British Columbia, with four of those records occurring since 1990 from the eastern half of the Province in areas not considered breeding habitat (Campbell *et al.* 1990, p. 481; Siddle 1992, p. 1169; Cornell Lab of Ornithology 2012). Today, the species is considered extirpated as a breeder from the Province, but adult, nonbreeding individuals still occur irregularly (British Columbia Conservation Data Centre 2013).

In the northern Rocky Mountains and northern Great Plains—from the Canada border south through Colorado—the yellow-billed cuckoo is ''extremely rare and local'' as a breeding bird both east and west of the Rocky Mountains (Hughes 1999, p. 3). While the species breeds locally in river valleys in southern Idaho, southwestern Wyoming, western Colorado, and in Utah (Hughes 1999, pp. 1–3), it is quite rare or absent within the higher Rocky Mountains (Johnsgard 1986, p. 201). An examination of the distributional records for the Rocky Mountain region indicates that the area has had few records of yellow-billed cuckoos and the species is even scarcer at elevations above approximately 6,000 feet (ft) (1,850 meters (m)), and almost never breeds above 7,000 ft (2,154 m) (Bailey 1928, pp. 307–309; Phillips *et al.* 1964, p. 45; Bailey and Niedrach 1965, pp. 404–406; Johnsgard 1986, p. 201; Corman and Magill 2000, pp. 10, 15; Howe and Hanberg 2000, p. 1–20). Exceptions to the elevational limit do occur and recent records of yellow-billed cuckoos have been confirmed above 6,000 ft (1,850 m) in the areas of Lower Green River Basin from the Seedskadee National Wildlife Refuge (NWR) to the Flaming Gorge Reservoir and west to the Bear River Drainage in Wyoming; along the Yampa River near Craig in northwest Colorado, and the Rio Grande River near Del Norte, and San Luis Valley of south-central Colorado; and the Henry's Fork River in Utah and Wyoming. Nevertheless, most of the crest of the Rocky Mountains includes a wide region of higher elevation where habitat for the species does not occur. In Colorado and Wyoming, the region above 6,000 ft (1,850 m) is typically more than 150 mi (240 km) wide on an east-west axis (Oxford 1995, p. 82).

The separation of the western yellow-billed cuckoo population segment from yellow-billed cuckoos in the eastern population segment continues south along the crest of the Rockies into southern Colorado and northern New Mexico, then the Rocky Mountains end and the separation is along the watershed boundary between the Rio Grande and the Pecos Rivers in central New Mexico (Sangre de Cristo Mountains), and southwest Texas, terminating at the Rio Grande in the Big Bend National Park. In this region, the eastern and western yellow-billed cuckoo populations are separated by arid basins and isolated mountain ranges that emerge from a high desert plateau. These mountain ranges from north to south include the Sangre de Cristo Mountains and Sacramento Mountains in central and southern New Mexico, the Guadalupe Mountains and Delaware Mountains on the Texas-New Mexico border, and the Davis Mountains, Del Norte Mountains, and Santiago Mountains in western Texas south to the Chisos Mountains in the Big Bend National Park on the border with Mexico.

In southern New Mexico and western Texas where western yellow-billed cuckoos nest along the Rio Grande and eastern yellow-billed cuckoos nest along the Pecos River, the geographical separation is as little as 160 mi (257 km) and even closer along the Rio Grande (50 mi; 80 km). The closer proximity of western and eastern yellow-billed cuckoos in this region may be caused in part by the lower height of the mountain range being a less effective barrier (Hubbard 1978, p. 32; Howe 1986, p. 2). Historically, this gap was wider, because the banks of the Pecos River did not have riparian woodland and the area was not used by the species. Today, the riverine habitat along the Pecos River consists primarily of introduced tamarisk (*Tamarix* spp.), and it is thought that yellow-billed cuckoos from eastern North America have colonized the Pecos River system. Much of the area between the Pecos River and the Rio Grande in New Mexico and Texas consists of internal ephemeral drainages that are not connected to any major river systems and have no riparian habitat. Considering these factors along with the information on physical factors, we have included Texas west of the Rio Grande-Pecos River watershed boundary within the range of the western population. This physical division coincides with behavioral differences between eastern and western yellow-billed cuckoos, as discussed below.

South of the United States-Mexico border, yellow-billed cuckoos are separated by extensive areas of desert that lack suitable nesting and foraging habitat. In Mexico, the Chihuahuan Desert widens to 350 mi (563 km), and includes nearly all of the States of Chihuahua and Coahuila. There are very few records of yellow-billed cuckoos for this region, and we are not aware of any nesting records for either State. Suitable breeding habitat or connective riparian corridors are also lacking. Published range maps for the species do not include the eastern three-quarters of Chihuahua or the western three-quarters of Coahuila as part of the species' breeding range (Howell and Webb 1995, p. 347; Hughes 1999, p. 1). There are only 12 records of yellow-billed cuckoos from Chihuahua: 11 specimens from the 1940s to 1960, and a sight observation in 2003. There are only nine records of the species from Coahuila: six specimen and three sight records (1958, 1988, and 2011). Three of the specimens from Coahuila were identified as eastern yellow-billed cuckoos on their museum records, and the others were not identified to subspecies. Seven specimens from Chihuahua were identified to subspecies and six of these were considered the western subspecies. It is likely that many, if not most, of the records from this region are of migrating yellow-billed cuckoos, as 16 are from May to mid-June or from late September, and only 5 are from late June or July, the primary breeding season.

From this information we concluded that the Chihuahua-Coahuila border was the most biologically supportable boundary for the population segment. The boundary then follows the southern border of Chihuahua west to the Continental Divide, then south along the divide through the State of Durango and west along the southern border of Durango and Sinaloa. There are no breeding season records for yellow-billed cuckoos from the State of Nayarit or Jalisco or farther south along the

Pacific coast of Mexico. The species has occurred sporadically in the State of Zacatecas, but the records are from east of the Continental Divide.

Eastern and western yellow-billed cuckoos are highly migratory, and the two populations may spend winters in overlapping regions in South America. However, we do not have information to indicate that there is anything more than an extremely low level of interchange (if any at all) between the two populations during the breeding season. This conclusion is supported by differences in habitat use and morphology, which are genetically controlled traits, as discussed in the following sections.

Although the Rocky Mountains and the Chihuahuan Desert may not wholly prevent movement of yellow-billed cuckoos between the east and west, especially in a migratory species that winters far to the south, and moves thousands of miles between its wintering and breeding grounds, the available information indicates that this mountain range and desert substantially separates yellow-billed cuckoo populations during the breeding season, thereby effectively separating them into discrete populations. The separation between yellow-billed cuckoo population segments in the east and west is a physical one that is maintained by their behavioral differences, which we discuss below.

Behavioral Discreteness

Data collected from publications and other sources demonstrate the existence of behavioral differences between yellow-billed cuckoos in the east and west.

Yellow-billed cuckoo populations in the east and west differ in the timing of arrival on the breeding grounds in the spring. Yellow-billed cuckoos in western North America arrive on the breeding grounds 4 to 8 weeks later than eastern yellow-billed cuckoos at similar latitude (Franzreb and Laymon 1993, pp. 24–25; Hughes 1999, pp. 5–6, 12–13; Laymon 2000, *in. litt.,* pp. 15–16). Timing of spring migration and arrival on the breeding grounds has been determined to be the result of an evolved response under genetic control, and is likely caused by east-west climatic, habitat, and food availability differences (Cresswell *et al.* 2011, pp. 13–15; Pulido *et al.* 2001). The watershed boundary between the Rio Grande and the Pecos Rivers also appears to separate yellow-billed cuckoos that arrive in spring migration earlier on the Pecos River and those that arrive later on the Rio Grande in addition to separating morphological differences.

Information, including timing of migration, indicates that yellow-billed cuckoos from Texas west of the Pecos River (from the Rio Grande upstream of Big Bend) and from northwestern Mexico (Chihuahua, Sonora, Sinaloa, Durango, Baja California Sur) exhibit greater similarity to yellow-billed cuckoos in western North America, and those on the Pecos River in Texas and eastern Mexico (Coahuila, Nuevo Leon, Tamaulipas, San Luis Potosi) are more similar to yellow-billed cuckoos in the east (Wauer 1971, p. 96; Oberholser and Kincaid 1974, pp. 434–435; Franzreb and Laymon 1993, pp. 17–28; Hughes 2000, *in litt.* pp. 1–2, 26; Sproul 2000, *in litt.,* pp. 1–5). Based on the best available science, the watershed boundary between the Rio Grande and Pecos Rivers is the optimum dividing line between eastern and western yellow-billed cuckoo in this area.

Based on migration timing, yellow-billed cuckoos split into two populations. This split occurs along the line that corresponds with the traditional subspecies boundary (see Figure 1, above).

Discreteness Conclusion

The available information indicates that the yellow-billed cuckoo population segment that occurs west of the Continental Divide (as defined above) in the United States, in southwestern Canada, and in northwestern Mexico is markedly separated from the eastern population segment of yellow-billed cuckoo, including those that nest in eastern North America, eastern Mexico, certain Caribbean Islands, and the Yucatan Peninsula. The distribution of the western populations is markedly separated physically (geographically) during the breeding season from the distribution of other yellow-billed cuckoo populations by high mountains, extensive desert, or nonhabitat areas with the shortest geographical separation occurring across 160 mi (257 km) of desert between the Pecos River and Rio Grande in southern New Mexico and western Texas with the exception of nesting of western yellow-billed cuckoos near Big Bend National Park in Texas. Evidence that this geographical separation between populations has been consistent through time may be found in the differences in the two populations' biology and morphology. Even in this area of closest proximity, information on genetically controlled behavior available in the scientific literature provides evidence of a biological separation between the western populations and eastern populations.

Under our DPS policy, the standard for discreteness does not require absolute separation because this can rarely be demonstrated for any population of organism. For the yellow-billed cuckoo populations in western North America, we have met this standard, and, therefore, we consider the western population segment of the yellow-billed cuckoo from southern British Columbia, Canada south along the Continental Divide (including the Rio Grande basin) in the United States into Mexico, and ending at the coast in the State of Sinaloa, Mexico, to be discrete per our DPS policy. We conclude that the western population segment of the yellow-billed cuckoo is discrete from the remainder of the species because the yellow-billed cuckoo population segment that nests west of the Continental Divide (as defined above) and in northwestern Mexico is markedly separated geographically and behaviorally from all other populations of yellow-billed cuckoo, including those that nest in eastern North America.

Significance

Under our DPS policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs. Our DPS policy provides several potential considerations that may demonstrate the significance of a population segment to the remainder of its taxon, including: (1) Evidence of the persistence of the discrete population segment in an ecological setting unusual or unique for the taxon, (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon, (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range, or (4) evidence that the discrete population segment differs markedly from the remainder of the species in its genetic characteristics.

We have found substantial evidence that two of these four significance criteria (numbers 2 and 4) are met by the discrete population segment of yellow-billed cuckoos that occurs west of the Continental Divide (as defined above). We address these significance factors below as they relate to the population segment of western yellow-billed cuckoo. We focus on whether the loss of this population segment would result in a significant gap in the range of the taxon and evidence that the discrete

population segment differs from other population segments in its genetic characteristics in demonstrating significance of the DPS.

Evidence That Loss of the Discrete Population Segment Would Result in a Significant Gap in the Range of the Taxon

Loss of the discrete population segment would result in a significant gap in the range of the taxon because an extensive area would be without yellow-billed cuckoos if the western population segment were lost. Seven entire States and substantial portions of five additional States in the United States, and six States in Mexico, that are currently occupied would have no breeding populations of the species. Bird migration experts divide the North American continent into four migratory flyways: The Atlantic, Mississippi, Central, and Pacific. The range of the yellow-billed cuckoo west of the Rocky Mountains covers the entire Pacific flyway and half of the Central flyway. Additionally, the range of the yellow-billed cuckoo west of the Rocky Mountains covers 1,350,000 square (sq) mi (3,496,500 sq km), or approximately 40 percent of the lower 48 States. Even though the actual area occupied by the species in western North America is less than the total area identified above, the potential loss of the western population of the yellow-billed cuckoo would constitute a significant gap in the range of the species in North America.

Evidence That the Discrete Population Segment Differs Markedly From Other Populations of the Species in Its Genetic Characteristics

Data collected from publications and other sources demonstrate the existence of morphological and physiological differences between yellow-billed cuckoos in the east and west. Morphologically, the yellow-billed cuckoos in western North America are generally larger, with significantly longer wings, longer tails, and longer and deeper bills (Franzreb and Laymon 1993, p. 25). Banks, in a review of the species taxonomic status (1988, pp. 473–477), grouped yellow-billed cuckoo specimens into 19 regional groups, 7 in the western United States and western Mexico, 10 in the eastern United States and eastern Mexico, 1 in New Mexico, and 1 in the Caribbean. He found yellow-billed cuckoos in the east to be uniform in measurement throughout their range and yellow-billed cuckoos in the west to be uniform in measurements throughout their range (Banks 1988, p. 475). Banks stated that the change from smaller to larger yellow-billed cuckoos appeared to take place in extreme western New Mexico or extreme eastern Arizona (Banks 1988, p. 476). A subsequent analysis, based on available specimens from New Mexico and western Texas, showed the watershed boundary between the Pecos River and the Rio Grande as the apparent boundary between the smaller eastern and larger western birds, with a majority of yellow-billed cuckoos on the Rio Grande above Big Bend being larger western birds (63 percent, n=19) and the majority of yellow-billed cuckoos on the Pecos River being smaller eastern birds (82 percent, n=11) (Franzreb and Laymon 1993, p. 25). This is the only area where the ranges of the western and eastern population segments are in close proximity; elsewhere the two populations are separated by wide expanses of unsuitable, unoccupied habitat (see Figure 1, above).

One peer reviewer measured 35 cuckoos from the Rio Grande and 25 cuckoos from the Pecos River in the field. With the exception of wing and tail measurements, accurate measurements are hard, if not impossible, to obtain from live birds under field conditions. Male and female cuckoos averaged longer wings and tails on Rio Grande than on the Pecos River, with the difference being more pronounced on male than on female cuckoos. Sample sizes were insufficient to do t-tests to compare the means for the wing and tail data. The bill measurements that the reviewer took in the field were not reliable and therefore could not be compared, and as a result the comparison using the Discriminant Function equations developed by Franzreb and Laymon (1993, pp. 17–28) could not be used reliably on the data.

Other physical and morphological differences exist between yellow-billed cuckoos in the east and west, and provide additional evidence of ecological significance. These include:

- Yellow-billed cuckoos in western North America produce larger eggs (1.2 percent longer, 0.6 percent wider, and 3.2 percent heavier) with thicker eggshells (7.1 percent thicker) (Hughes 1999, p. 14), which is an evolved trait that would help yellow-billed cuckoos in the west to cope with potential higher egg water loss in the hotter, drier conditions of western North America (Hamilton and Hamilton 1965, pp. 426–430; Ar *et al.* 1974, pp. 153–158; Rahn and Ar 1974, pp. 147–152).
- Juvenile yellow-billed cuckoos in the east have yellow bills (Oberholser and Kincaid 1974, pp. 434–435), while juvenile yellow-billed cuckoos in the west have all-black bills (Franzreb and Laymon 1993, p. 26).
- Adult yellow-billed cuckoos in the west have a lower mandible that is orange-yellow, while yellow-billed cuckoos in the east have lower mandibles that are bright yellow (Franzreb and Laymon 1993, p. 26; Laymon 2000, *in litt.,* p. 14).
- As noted previously, adult yellow-billed cuckoos in the west are larger and heavier, on average, than adult yellow-billed cuckoos in the east. More than 80 percent of individuals can be assigned to east or west based on morphological measurements (see also Oberholser and Kincaid 1974, pp. 434–435; Banks 1988, pp. 473–477; 1990, p. 538; Franzreb and Laymon 1993, pp. 17–28). The size differences between eastern and western cuckoos are discussed in detail in the *Taxonomy* section of the proposed rule (78 FR 61624–61625; October 3, 2013).

Information, including morphology, indicates that yellow-billed cuckoos from Texas west of the Pecos River (from the Rio Grande upstream of Big Bend) and from northwestern Mexico (Chihuahua, Sonora, Sinaloa, Durango, Baja California Sur) exhibit greater similarity to yellow-billed cuckoos in western North America, and those on the Pecos River in Texas and eastern Mexico (Coahuila, Nuevo Leon, Tamaulipas, San Luis Potosi) are more similar to yellow-billed cuckoos in the east (Wauer 1971, p. 96; Oberholser and Kincaid 1974, pp. 434–435; Franzreb and Laymon 1993, pp. 17–28; Hughes 2000, *in litt.* pp. 1–2, 26; Sproul 2000, *in litt.,* pp. 1–5). Based on the best available science, the watershed boundary between the Rio Grande and Pecos Rivers is the optimum dividing line between eastern and western yellow-billed cuckoo in this area.

Based on morphological measurements, bill color of young and adults, egg size and weight, and migration timing, yellow-billed cuckoos split into two populations. This split occurs along the line that corresponds with the traditional subspecies boundary (see Figure 1, above). Phenotypically or outwardly expressed traits present substantial evidence that the western population segment of yellow-billed cuckoo differs markedly from other populations of the species.

However, the strongest evidence of differences between yellow-billed cuckoos in the western population segment and those of the east in genetic characteristics is the difference in timing of migrations. This difference can only have developed as an evolved trait in response to environmental factors over a long period of time, and thus is genetically linked (Cresswell *et al.* 2011, pp. 13–15; Pulido *et al.* 2001). As previously discussed, the difference

in size of yellow-billed cuckoos between east and west, as well as differences in size, weight, and shell thickness of eggs, are also evolved genetically linked traits. As discussed in the October 3, 2013, proposed rule, researchers have developed methods using these phenotypic (outwardly expressed) traits that correctly predicted separation for nearly 90 percent of yellow-billed cuckoos that were eastern, and up to approximately 86 percent that were western (Franzreb and Laymon 1993, pp. 17–28). Thus, based on the phenotypic traits, there is indirect evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Significance Conclusion

The best available information indicates that the discrete yellow-billed cuckoo population segment that nests west of the Continental Divide (as defined above) and in northwestern Mexico is important to the taxon to which it belongs because: (1) Loss of the population segment would leave a significant gap in the species' range (more than one third of the species' range would be vacant); and (2) it differs markedly from other yellow-billed cuckoo populations in morphology (e.g., western yellow-billed cuckoos are larger) Therefore, we conclude that the western population segment of the yellow-billed cuckoo is *significant* per our DPS Policy.

DPS Conclusion

Based on the best scientific and commercial data available on distribution as well as behavioral and morphological characteristics of the species, we have determined that the western population segment of the yellow-billed cuckoo is both discrete and significant per our DPS policy. Therefore, we conclude that the western distinct population segment of the yellow-billed cuckoo is a DPS, and thus a ''species'' under section 3(16) of the Act. Our determination of biological and ecological significance is appropriate because the population segment has a geographical distribution that is biologically meaningful.

The term ''distinct population segment'' is not commonly used in scientific discourse. As such, and in contrast to taxonomically defined species and subspecies, there is no established name for the western distinct population segment of the yellow-billed cuckoo in the available literature; we will refer to this ''species'' (DPS) as the western yellow-billed cuckoo. The range of the western yellow-billed cuckoo in Canada includes the area of Vancouver Island and along the Fraser River system upstream to Kamloops to the Rocky Mountains west of the Continental Divide. In the United States the DPS includes the area west of the Continental Divide, south through Montana, Wyoming, Colorado, and along the watershed divide between the upper and middle Rio Grande and Pecos Rivers in New Mexico and Texas, south to Big Bend in southwestern Texas, and extending to the States of the west coast. In Mexico, the DPS is the area west of the eastern and southern border of the State of Chihuahua, west of the Continental Divide in the State of Durango, and the southern border of the State of Sinaloa (Figure 2).

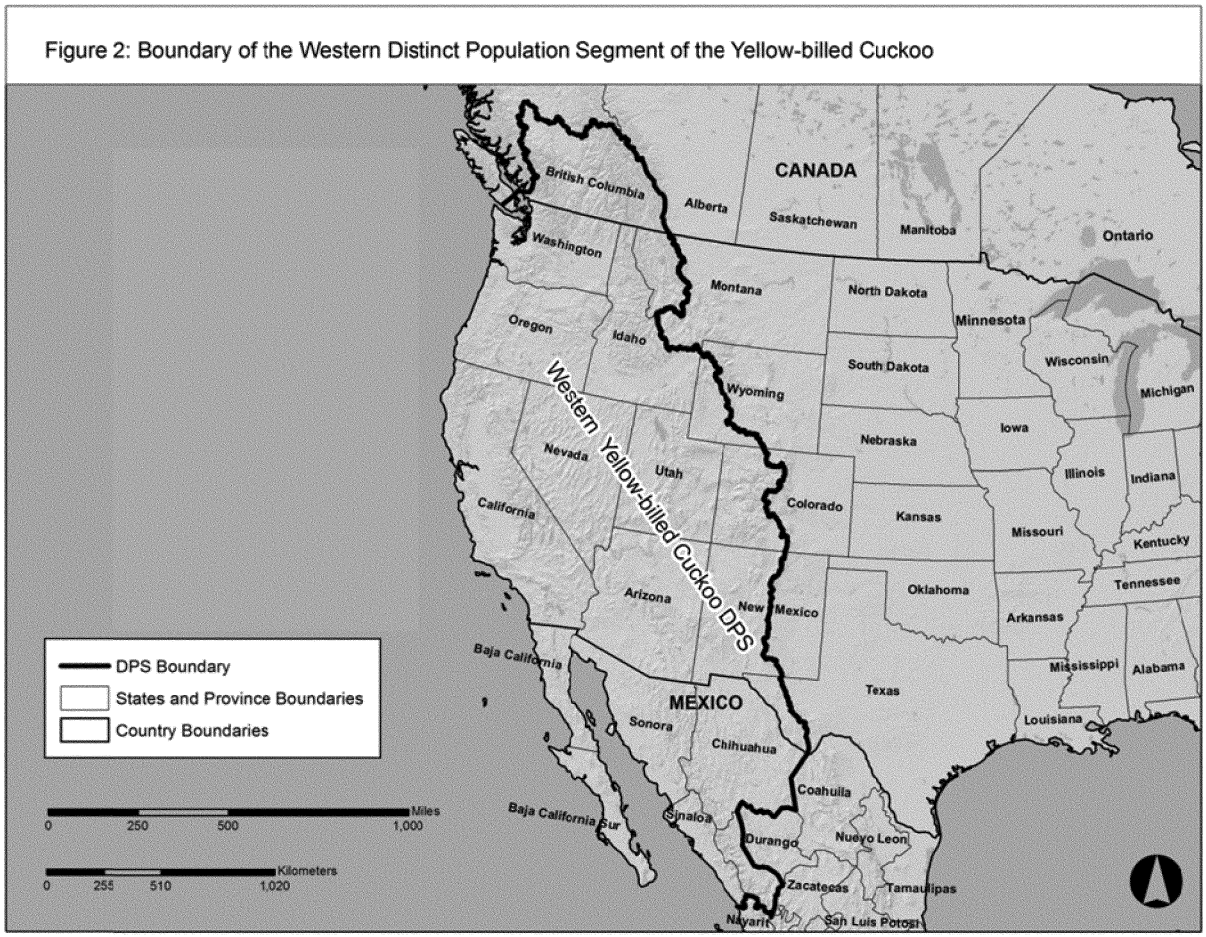

Figure 2. Western Yellow-billed Cuckoo distinct population segment boundary.

Summary of Comments and Recommendations

In the proposed rule published on October 3, 2013 (78 FR 61621), we requested that all interested parties submit written comments on the proposal by December 2, 2013. The comment period was reopened on December 26, 2013, and remained open until February 24, 2014 (78 FR 78321). The comment period was reopened again on April 10, 2014, and remained open until April 25, 2014 (79 FR 19860). We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in the Idaho State Journal (Pocatello, ID), Post Register (Idaho Falls, ID), Idaho Mountain Express (Sun Valley, ID), Idaho Statesman (Boise, ID), Coeur d'Alene Press (Coeur d'Alene, ID), Las Vegas Sun (Las Vegas, NV), Las Vegas Review-Journal (Las Vegas, NV), Reno Gazette-Journal (Reno, NV), The Oregonian (Portland, OR), Yakama Herald, (Yakima, WA), Wenatchee World (Wenatchee, WA), The Olympian (Olympia, WA), The Spokesman Review (Spokane, CA), Bellingham Herald (Bellingham, WA), Salt Lake Tribune (Salt Lake City, UT), Helena Independent Record (Helena, MT), The Missoulian (Missoula, MT), Valley Courier (Alamosa, CO), Craig Daily Press (Craig, CO), (The Daily Sentinel (Grand Junction, CO), El Paso Times (El Paso, TX), Albuquerque Journal (Albuquerque, NM), The Arizona Republic (Phoenix, AZ), The Californian (Bakersfield, CA), and Press-Enterprise (Riverside, CA). We did not receive any requests for a public hearing.

During the comment periods for the proposed rule, we received 34,459 comment letters directly addressing the proposed listing of the western DPS of the yellow-billed cuckoo as a threatened species. The vast majority of these comment letters voiced their support or opposition to the action, but did not provide significant supporting information on the proposed listing. A total of 34,380 letters were in support of the listing, while 54 letters were in opposition to listing, with 25 commenters providing additional information, but took no position on the listing of the species. Approximately 141 of these comment letters provide additional information or comments. All substantive information provided during comment periods has either been incorporated directly into this final determination or is addressed below.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from five knowledgeable individuals with scientific expertise that included familiarity with the yellow-billed cuckoo and its habitat, biological needs, and threats. We received responses from all five of the peer reviewers.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the listing of the western DPS of the yellow-billed cuckoo. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the final

rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) *Comment:* One reviewer discussed the heritability of migration timing, indicating that the difference in migration timing between eastern and western cuckoos is reflective of genetic differences and added a supportive reference (Pulido *et al.* 2001).

Our Response: In the proposed and this final rule, we outlined our reasoning for determining that the western populations of the yellow-billed cuckoo constitute a valid DPS (see **Distinct Vertebrate Population Segment Analysis**, above). In our determination, we relied on behavioral and morphological and other characteristics of the species to support separation and distinctness from yellow-billed cuckoos in the east. Although genetics most likely play a role in behavioral and morphological aspects of a species, in our determination we did not rely on specific genetic information or separation to come to our conclusion. The views of the peer reviewer and the information they provided (Pulido *et al.* 2001, pp. 149–158) further support our conclusions reached in determining a valid DPS for the western yellow-billed cuckoo. We revised this final rule to include the information provided.

(2) *Comment:* One reviewer stated that a close examination of the DNA studies conducted on cuckoos to date would infer a deeper genetic divergence between western and eastern cuckoos than presented in the proposed rule and that further analysis would likely support division of species into two subspecies. The reviewer also provided a critique of the techniques used in the studies to date, noting that markers used in all three genetics studies evolve too slowly to reveal genetic structure within the species, and that the choice of outgroup for study comparison was flawed in one study.

Our Response: See response to *Comment* 1 above for a discussion of how we used genetic information in our DPS determination. Although we agree that further studies and information on the genetics for the yellow-billed would assist in further validating our determination of separation between eastern and western yellow-billed cuckoo populations, we must rely on the best scientific or commercial data available to make our listing determinations. We appreciate the information provided and have made some revisions to the DPS analysis to incorporate citations provided by the peer reviewer, as needed.

(3) *Comment:* Two reviewers indicated that recent research has shown that vocalizations cannot be reliably used to determine the sex of cuckoos in the field. Two public commenters also raised this concern.

Our Response: We concur and have revised the text to clarify information on vocalizations for the western yellow-billed cuckoo.

(4) *Comment:* One reviewer indicated that the habitat section could be strengthened by presenting habitat models that have been developed. This reviewer suggested that the presentation of tamarisk as a habitat component could be improved by using information from several references from research on the Colorado River (see Johnson *et al.* 2008a, Johnson *et al.* 2012, McNeil *et al.* 2012). Within-patch vegetation measurements show that sites occupied by western yellow-billed cuckoos do not include dense tamarisk patches.

Our Response: Based on observations of western yellow-billed cuckoos, we have identified riparian trees including willow (*Salix* sp.), Fremont cottonwoods (*Populus fremontii*), alder (*Alnus* sp.), walnut (*Juglans* sp.), sycamore (*Platanus* sp.), boxelder (*Acer* sp.), ash (*Fraxinus* sp.), mesquite (*Prosopis* sp.), and tamarisk (*Tamarix* sp.) as habitat that provides cover, shelter, foraging, and dispersing habitat for the western yellow-billed cuckoo. Tamarisk is considered a nonnative, invasive species across the West. Although the western yellow-billed cuckoo uses tamarisk as a component of its habitat, it is usually in areas where the habitat has been degraded. We appreciate the peer reviewer's information on habitat modeling and will review this information in development of any final critical habitat determination for the species. We have reviewed the information provided by the reviewer and have revised our discussion of habitat selection and tamarisk use and compatibility for the western yellow-billed cuckoo in this final rule (see ''Use of Tamarisk by Western Yellow-billed Cuckoos and the Spread of the Introduced Tamarisk Leaf Beetle into the Southwest,'' below).

(5) *Comment:* One reviewer suggested that estimates of breeding populations of western yellow-billed cuckoos may be overestimates and the numbers may be even lower than indicated in the proposed rule.

Our Response: We are aware of the difficulties in obtaining accurate counts of western yellow-billed cuckoos. Survey methods for western yellow-billed cuckoos have evolved over time since the first play-back surveys were conducted in California in the 1970s. Some changes in survey method include changes in the distance between calling stations (100 vs. 200 meters), changes in the number of calls played at calling stations (5 vs. 10 calls), number of surveys carried out during the breeding season (2 to 5 surveys), and the timing of the surveys (1 June to 15 August vs. 15 June to 1 August). Despite these changes, general response rates have remained constant. On average, an individual western yellow-billed cuckoo will respond to playback call 50 percent of the time, and one member of a pair will respond 75 percent of the time. With a second visit, the probability of an individual responding has risen to 75 percent, and the probability of one member of a pair responding has risen to 94 percent. With three visits, the probability of an individual responding is 94 percent, and the probability of one member of a pair responding is 99.6 percent.

Obtaining accurate survey results are made more difficult because: (1) Western yellow-billed cuckoos often have helper males at the nest; (2) they are only loosely territorial; (3) nests of adjacent pairs can be very close to each other; (4) female western yellow-billed cuckoos often lay a second and third clutch sometimes with different mates; and (5) it is likely that they move from one river system to another between clutches. These unusual behaviors can lead to either an over count or an under count of individuals, pairs, or territories.

Many of the earlier population estimates were made of pairs of western yellow-billed cuckoos. For the reasons listed above, some recent researchers have decided that it is more accurate to use the term territories rather than pairs. An assessment of the methodology used to determine pairs in the older studies and territories in the more recent studies concludes that very similar methodology is used and that the numbers are comparable.

In some cases, we were able to use the original survey data and simply compare the number of survey hours and number of western yellow-billed cuckoos surveyed and compare them from one year to the next and one time period to another. This is a very reliable and accurate method of comparison. In other cases, such as that at the South Fork Kern River Valley in California from 1985 to 2001, when all nesting pairs were either documented by finding a nest or seeing positive nesting behavior (e.g., western yellow-billed cuckoos carrying food to young) the

number of pairs were compared over time.

We have taken all of these difficulties and changes of survey methods and changes of data and behavior interpretation into account in our assessment of survey results and western yellow-billed cuckoo population trends. We have used the best available data and science in determining population estimates and trends. Because we have been aware of the changes in survey methods and have factored that information into our analysis, we are confident that our estimates of breeding populations are accurate.

(6) *Comment:* One reviewer indicated that habitat use separates eastern and western cuckoos; observations suggest that in eastern New Mexico and Texas yellow-billed cuckoos from eastern populations nest in monotypic stands of tamarisk, while western yellow-billed cuckoos do not.

Our Response: We have considered this information in our determination of the DPS for the yellow-billed cuckoo. Although credible observations of species behavior are valuable, peer-reviewed published materials would further support these observations, and additional research on this topic would be valuable. The information provided will be considered further in the development of the final critical habitat designation for the species and in recovery planning.

(7) *Comment:* Two reviewers suggested that the section on climate change could be condensed and that uncertainties in forecasting precipitation could bog down conservation actions that would clearly benefit western yellow-billed cuckoos in the near future.

Our Response: The Service used the climate change information that was available in the literature. Because the western DPS of the yellow-billed cuckoo covers such a large area, the effects of climate change will be different in the various regions. The Pacific Northwest may become cooler and wetter, the desert Southwest may become warmer and dryer. The exact effect of these changes on western yellow-billed cuckoos is difficult to predict. However, based on our review of the literature, we have concluded that a warmer and dryer Southwest, an area that is already water-stressed, with a growing human population, is likely to have an adverse effect on riparian habitat. This will exacerbate the changes that have already occurred in the region and should not be ignored. We appreciate the expressed concerns; however, we have retained the information presented in the section.

(8) *Comment:* One reviewer provided survey results indicating that western yellow-billed cuckoos have been detected along the San Juan and Green rivers in Utah, although it is not yet known whether breeding occurs in these areas. The reviewer notes that further surveys are needed.

Our Response: We appreciate this additional information and have considered this in our listing determination. This information will also be considered in our final critical habitat designation.

(9) *Comment:* One reviewer commented that a potential planned activity is the reallocation of water from the San Juan River on Navajo Tribal lands, which could negatively affect water delivery on the Colorado River and western yellow-billed cuckoo habitat on the Lower Colorado River.

Our Response: We appreciate this additional information and have considered this in our listing determination. This information will also be useful in recovery planning and implementation.

(10) *Comment:* One reviewer provided information that describes the ecological cascade process that leads to loss of western yellow-billed cuckoo habitat in riparian areas. The peer reviewer stated that the key to sustaining western yellow-billed cuckoo habitat is maintaining an ongoing process of new land creation and flow patterns conducive to colonization of willow and cottonwood. The peer reviewer also noted that it is problematic that a National Wildlife Refuge (NWR) on Sacramento River only occurs on one side of the river, and the opposite bank is not allowed to erode.

Our Response: We appreciate this additional information and have considered this in our listing determination. The information will be helpful when developing a recovery plan for the western yellow-billed cuckoo.

(11) *Comment:* One reviewer adds an additional pervasive threat is the design of open channel flood control channels with inappropriately smooth roughness coefficients. This over-scours the floodplains and requires removal of woody riparian vegetation that regenerates on floodplains. This leads to floodplains with no western yellow-billed cuckoo habitat.

Our Response: We have added this information to section ''Encroachment of Levees and Flood Control and Bank Stabilization Structures into the River Channel and Floodplain'' in the Factor A discussion in this final rule.

(12) *Comment:* One reviewer provides information on several additional projects that he indicates are impacting western yellow-billed cuckoo habitat. The reviewer notes that the U.S. Army Corps of Engineers (USACE) Sacramento River Bank Protection Project has been channelizing and rip-rapping river banks for many decades and that the project impedes the dynamic riverine processes that create western yellow-billed cuckoo habitat. The reviewer adds that the California Department of Water Resources has proposed a new reservoir project (the Sites Reservoir) for off-stream water storage, suggesting that the project would be a major water diversion project that would further degrade stream power on the Sacramento River, and contribute to an ecological cascade on the river (see *Comment* 10 above and the discussion under Factor A below). The reviewer also noted two proposed projects that he thinks would provide a potential conservation benefit to western yellow-billed cuckoo habitat. Both projects involve the creation of several miles-long oxbow lakes on the Sacramento River, at Woodson Bridge, and at a pumping facility across from Llano Seco unit of Sacramento River NWR.

Our Response: We appreciate this additional information and have considered this in our listing determination. This information will be helpful in developing and implementing the recovery plan for the species.

(13) *Comment:* One reviewer indicated that in Conservation Efforts section under the Factor E discussion, a distinction should be made between ''active'' restoration and ''process-based'' restoration.

Our Response: We have revised the text in the section to clarify the difference in types of restoration activities.

(14) *Comment:* One reviewer measured 35 cuckoos from the Rio Grande and 25 cuckoos from the Pecos River. He found that Rio Grande males and females were larger for all measurements than Pecos cuckoos, but Pecos cuckoos are larger than eastern or Trans Pecos cuckoos reported in Franzreb and Laymon's (1993, pp. 17–28) subspecies paper. He applied the Discriminant Function Analysis (DFA) equation (developed by Franzreb and Laymon, 1993, pp. 17–28) to 35 cuckoos from Rio Grande, of which 86 percent tested as western and 25 cuckoos from Pecos River of which 68 percent tested as western.

Our Response: We thank the reviewer for this information. However, we are concerned that the measurements may have been taken incorrectly for the

following reasons. We first note that, with the exception of wing measurements, accurate measurements are hard, if not impossible, to obtain from live birds under field conditions. We are concerned that in the given sample, bill-depth measurements may have been measured incorrectly because all individuals measured, regardless of area of origin, had deeper bills than any of the cuckoos measured by Banks (1988, pp. 473–477) or Franzreb and Laymon (1993, pp. 17–28). It is likely that these measurements were taken on an incorrect location on the bill. We note that several of the bill-length measurements reported were also record lengths for cuckoos, regardless of origin and suspect that they too were likely measured incorrectly. The use of these incorrect measurements in the DFA equations would be expected to yield incorrect ''likely area of origin.'' Therefore, we have not used this information in our final listing determination.

Federal Agency Comments

During the development of the proposed and this final listing rule, we coordinated with Federal agencies and asked for their input on the information presented and any concerns they may have. We have not included specific comments and responses to Department of the Interior (DOI) agencies in this rule (Bureau of Land Management, Bureau of Reclamation, and National Park Service). We have worked with the DOI agencies during the development of this rule, and their comments and concerns are included in the record materials for this final determination. We have reviewed any DOI comments and information, and have made changes that we determined were appropriate to the final listing of the western yellow-billed cuckoo. A total of seven comment letters were received from five Federal agencies from outside the DOI, and they are outlined below.

(15) *Comment:* The U.S. Air Force stated that training flights from Luke Air Force Base (AFB) may pass over western yellow-billed cuckoo habitat, but they are unlikely to disturb the western yellow-billed cuckoos because the airplanes fly over 500 ft. above ground level, while western yellow-billed cuckoo fly, forage, and nest within the canopy of the trees. Also, the duration of the sound from the jet airplanes is only for a few seconds and the flights are infrequent.

Our Response: We appreciate receiving the information on Air Force training flights at Luke AFB. We will consider this information during any consultation regarding the species in the future.

(16) *Comment:* The USACE provided references that deal with southwestern willow flycatcher (*Empidonax traillii extimus*) consultations and management at Lake Isabella, California. They stated that their conservation plan and associated conservation easements for southwestern willow flycatchers provide habitat protections for the western yellow-billed cuckoo as well as least Bell's vireos (*Vireo bellii pusillus*). They are concerned that if the western yellow-billed cuckoo is listed and formal consultation for long-term operations of Isabella Reservoir are triggered, the USACE may be required to ''reoperate'' the reservoir, which would increase risk of loss of human life and cause significant impacts to economics downstream. This concern was also voiced by one public commenter.

Our Response: Although specific project activities may require additional review and potentially result in formal consultation for various Federal actions, it is reasonable to assume that the conservation plan and associated conservation easements for the southwestern willow flycatcher may provide habitat protections for the western yellow-billed cuckoo. However, consultation with the Service will not likely result in operation decisions that would cause a risk of loss of human life or cause significant impacts to downstream economies. We have been coordinating with the USACE on their activities and dam operation at Lake Isabella as it relates to all listed species and will continue to do so into the future.

(17) *Comment:* The U.S. Forest Service (USFS) provided several reports on western yellow-billed cuckoo surveys conducted at Isabella Reservoir. The Southwest Region of the USFS does not think they have western yellow-billed cuckoos on the Carson or Cibola National Forests. They also had several questions about wording in the proposed rule regarding grazing and listed several references regarding the effects of well-managed grazing, which they say has less adverse impact on western yellow-billed cuckoos and their habitat than traditional, poorly managed grazing. Lastly, they stated that mesquite bosque habitat was very important to western yellow-billed cuckoos and that the habitat was more important than the proposed rule indicated.

Our Response: We appreciate the additional information provided by the USFS and have considered it or incorporated changes to language into our final listing determination. Well-controlled grazing activity can be compatible within riparian zones and in western yellow-billed cuckoo habitat depending on the conservation measures implemented for the grazing activity. The amount of management depends on the sensitivity of the habitat at any given location and would most likely need to be managed on a site-by-site basis. For example, a grazing regime used on Audubon California's Kern River Preserve in the South Fork Kern River Valley limits grazing to outside the growing season (October to March). This time restriction allows for regeneration of willows and cottonwoods and precludes the tree browsing and high-lining that often accompanies heavy summer (growing season) grazing. We concur that mesquite bosque habitat is very important to western yellow-billed cuckoos, and this has been stated clearly in the proposed and this final rule.

(18) *Comment:* The U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) in Texas stated that they are interested in helping landowners conserve and manage critical habitat for the western yellow-billed cuckoo.

Our Response: We appreciate this additional information and have considered this in our listing determination. NRCS' cooperation and assistance will be very helpful during the recovery phase for the species.

(19) *Comment:* The International Boundary and Water Commission provided information on riparian habitat restoration along the Rio Grande as well as results of recent western yellow-billed cuckoo surveys.

Our Response: We appreciate this additional information and have considered this in our listing determination. Restoration of riparian habitat will be an important phase in the recovery of the western yellow-billed cuckoo. This information will also be helpful in the development and implementation of a recovery plan for the western yellow-billed cuckoo.

(20) *Comment:* The USDA NRCS in Texas expressed concern regarding economic impacts to local landowners and municipalities. This concern was echoed by several public commenters.

Our Response: According to section 4(b)(1)A) of the Act, we are to base our listing determinations solely on the basis of the best scientific and commercial data available as they relate to the five factors listed in section 4(a)(1) of the Act. The consideration of economics is only related to the designation of critical habitat under section 4(b)(2) of the Act.

Comments From States

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' Comments received from the States regarding the proposal to list as a ''threatened species'' for the western DPS of the yellow-billed cuckoo are addressed below. We received 17 comment letters from 17 State agencies in 11 States. Of the 17 letters submitted, 9 were from State wildlife agencies. We did not receive comments from the State of Oregon.

Washington State

(21) *Comment:* The Washington State Department of Fish and Wildlife supports the DPS determination and listing of the western yellow-billed cuckoo as threatened. This is based on their observations that reports of individual occurrences for the State have been very rare for the past several decades and that the species is not confirmed to be breeding in the State. This is despite having some sizable areas of riparian habitat still remaining along the Lower Columbia River and additional habitat improvements, acquisition, and restoration efforts elsewhere in the State. The Washington State Department of Fish and Wildlife provided suggestions for clarification of habitat use by the western yellow-billed cuckoo in moist riparian habitat areas of western Oregon, western Washington, and southwestern British Columbia. They also provided information on several records of wider habitat use in the Northwest and suggested that there is historical evidence that the species may have used conifer woodlands and open brushy hillsides in Washington as secondary nesting habitat (Bent 1940, pp. 54–70; Jewett *et al.* 1953, pp. 342–343).

Our Response: We appreciate this additional information and have considered this in our final listing determination. This habitat information has been discussed in detail in our proposed critical habitat designation. See the proposed critical habitat rule for the western yellow-billed cuckoo published in the **Federal Register** on August 15, 2014 (79 FR 48547). Also see the **Summary of Changes from Proposed Rule** section of this final rule and the *Habitat Use and Needs* section from the proposed listing rule for additional discussion on habitat use in Washington and Oregon (78 FR 61633–61634; October 3, 2013).

(22) *Comment:* The Washington State Department of Natural Resources (DNR) stated that they have developed a conservation strategy on its trust lands for conservation of salmonid freshwater stream habitat and other riparian obligate species habitat (DNR Trust Lands Habitat Conservation Plan). DNR stated that they would expect that implementation of the plan would assist in benefiting the western yellow-billed cuckoo's habitat and any future recovery efforts for the species. DNR also stated that they would continue to participate in the development of any future critical habitat designation.

Our Response: We appreciate this additional information and have considered this in our listing determination. This information will also be considered in our final critical habitat designation.

Idaho

(23) *Comment:* The Idaho Office of Species Conservation and the Idaho Department of Fish and Game stated that the Service fails to define foreseeable future in the proposed rule. This comment was echoed by several other commenters.

Our Response: The Act does not specifically define the term ''foreseeable future,'' and does not require the Service to quantify the time period of foreseeable future in making listing determinations. The Solicitor for the Department of the Interior conducted a review of the Congressional intent behind the term ''foreseeable future'' in the Act, and concluded that Congress intended the term ''foreseeable future'' to describe 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. The Secretary's ability to make reliable predictions may vary according to the threat at issue; consequently, the Solicitor concludes that this timeframe of ''the foreseeable future is not necessarily reducible to a particular number of years. Rather, it relates to the predictability of the impact or outcome for the specific species in question.'' In addition, the opinion notes that ''definitive quantification is rarely possible . . . and not required for a 'foreseeable future' analysis'' (Department of the Interior Memorandum M–37021, January 16, 2009; available at: *http://www.doi.gov/solicitor/opinions/M-37021.pdf*).

In considering the foreseeable future as it relates to the status of the western yellow-billed cuckoo, we considered the factors acting on the species and looked to see if reliable predictions about the status of the species in response to those factors could be drawn. We considered the historical data to identify any relevant existing trends that might allow for reliable prediction of the future conservation status of the species (in the form of extrapolating the trends). We also considered whether we could reliably predict any future events that might affect the status of the species, recognizing that our ability to make reliable predictions into the future is limited by the variable quantity and quality of available data. Available population information for western yellow-billed cuckoo is limited for determining trends because no long-term rangewide status survey has been completed and the threats facing the species are variable in intensity and scope across the species' range and do not reliably provide a sound basis for specific timeframe predictions. The available data do not allow us to determine a specific timeframe for the foreseeable future for the western yellow-billed cuckoo; therefore, we rely on a qualitative assessment of the foreseeable future, in terms of that period of time over which we can reasonably predict the future population trends and threats to the species, and the likely consequences of those threats and trends for the status of the species. We have discussed the timeframe for when we have determined the threats are acting on the species under each factor in the **Summary of Factors Affecting the Species** and in our **Determination** sections below.

Montana

(24) *Comment:* Montana Fish, Wildlife, and Parks indicated that the portion of the State that is shown as being within the DPS has historically not been considered within the range of the species. The agency indicated that there are only 8 records for western Montana, and only 3 of those were found in the past 30 years. They stated that the western quarter of the State, west of the Continental Divide, should be excluded from the DPS and the species not listed in Montana. This comment was also echoed by commenters in Utah, Colorado, and Wyoming who wanted their States removed from the DPS.

Our Response: We are aware of the limited number of sightings for the species in western Montana and other areas within the DPS. However, we consider yellow-billed cuckoos that are found in the portion of Montana west of the Continental Divide are western yellow-billed cuckoos based on dispersal and migratory patterns, the large gap between this region and southeastern Montana where eastern yellow-billed cuckoos sporadically

occur, and criteria used to map the DPS boundary. We based our boundary for the DPS on watershed boundaries along the upper elevation areas along the Rocky Mountains and on species occurrence records. It would be inconsistent and arbitrary to move the boundary or not include the western yellow-billed cuckoos in western Montana from the DPS regardless of how seldom they are found in the area.

Wyoming

(25) *Comment:* The Wyoming Game and Fish Department (WGFD) provided information on additional surveys for the Green River and on the State's classification of the species as a Tier III Species of Greatest Conservation Need with unknown population status and trends due to an extremely limited number of detections during targeted survey work (WGFD 2010, pp. IV-i-8). The WGFD stated it does not differentiate between eastern and western yellow-billed cuckoos but that habitat for the species continues to decline primarily as a result of nonnative plant (tamarisk) invasion. The WGFD believes that the estimate in the proposed rule of five or fewer pairs is an overestimate for the State, that it is highly unlikely that western yellow-billed cuckoos breed in the State on a consistent basis, and they doubt that the small numbers in Wyoming add to population viability of the subspecies. The WGFD recommended not designating any critical habitat or land use restrictions for the species in the State as most of the potential habitat for the species is above 7,000 ft (2,134 meters (m)). The State also recommended that ongoing and planned tamarisk removal should not be impeded as a result of the Service's final determination.

Our Response: As stated in the proposed rule and this final rule, we agree that the number of western yellow-billed cuckoos nesting in Wyoming is small. It is also possible that western yellow-billed cuckoos do not nest in the State every year. However, the species most likely uses the available habitat as movement corridors or stop-over areas during its migration to areas farther north or as foraging areas during prey outbreaks. We will consider any information on critical habitat during the development of the final critical habitat designation. As a result of listing the species, we would expect agencies and organizations conducting tamarisk removal projects to do so in a manner compatible with conservation of the western yellow-billed cuckoo (see response to *Comment* 28 below for additional information on tamarisk removal and the conservation of the western yellow-billed cuckoo).

California

(26) *Comment:* The California Department of Fish and Wildlife supports the DPS determination and listing of the western yellow-billed cuckoo as the species is already listed as endangered under the California Endangered Species Act (CESA) and the populations of the species in the State continue to decline. The California Department of Fish and Wildlife will continue to provide support in habitat management that will encourage recovery for the species in California.

Our Response: We appreciate the review and support of the California Department of Fish and Wildlife. This information will help with the development and implementation of the recovery plan for the western yellow-billed cuckoo.

Nevada

(27) *Comment:* Nevada State Department of Wildlife concurred with the Service's concerns regarding declines of the western yellow-billed cuckoo and summarized the status of the species in the State. The Nevada State Department of Wildlife also provided clarifications and updated information on occurrence records and habitat for the State. The western yellow-billed cuckoo is a species of conservation priority in Nevada, and the Nevada State Department of Wildlife is dedicated to conserving the species and improving its habitat whether it is listed or not.

Our Response: We appreciate this additional information and have considered this in our listing determination. This information will also be used in the development of our final critical habitat designation and implementation of a recovery plan for the western yellow-billed cuckoo.

(28) *Comment:* Nevada State Department of Wildlife, Wyoming Game and Fish Department, Utah Office of Governor, and Colorado Department of Agriculture listed tamarisk invasion as a major threat for western yellow-billed cuckoos and their habitat. There is some concern that listing the western yellow-billed cuckoo will curtail tamarisk removal projects and riparian restoration. Several commenters would like us to develop a rule under section 4(d) of the Act for riparian habitat restoration.

Our Response: The Service agrees that tamarisk is a major threat to the western yellow-billed cuckoo's habitat. We expect that in areas where restoration of native riparian vegetation is possible, removal of tamarisk would be considered a net benefit, as native riparian vegetation has a greater habitat value for the western yellow-billed cuckoo. If western yellow-billed cuckoos are documented to use an area slated for tamarisk removal, consultation with the Service may be necessary in order to jointly develop appropriate measures to avoid or minimize the potential for adverse effects to the western yellow-billed cuckoo. However, the process of listing a species as threatened under the Act is not designed to curtail projects that have the potential to benefit that species, and it is unlikely that beneficial tamarisk removal and riparian restoration projects would be negatively impacted from listing the western yellow-billed cuckoo. At this time, we are not developing a rule under section 4(d) of the Act for this species.

Utah

(29) *Comment:* The Director for the Utah Public Lands Policy Coordination Office stated that: (a) Utah has made great strides in conserving the yellow-billed cuckoo and its habitat and that the Service did not characterize the conservation benefits for the yellow-billed cuckoo as a State-sensitive species adequately in the proposed rule; (b) the DPS boundary is arbitrary and includes unoccupied areas or migratory habitat; and (c) the Service did not use or consider the best available scientific information provided by the Utah Division of Wildlife Resources (e.g., Beason 2009, additional Statewide surveys, GIS habitat models). The State requested that the Service not list the species as endangered or threatened under the Act, as it believes that the State is in the best position to manage and conserve the species and its habitat.

Our Response: We commend the State of Utah on the efforts they have made in conserving the western yellow-billed cuckoo and its habitat. However, we were not supplied with any information by the State on specific conservation efforts for the western yellow-billed cuckoo, so characterization of the conservation benefits for the species is not possible.

We disagree that the DPS line is arbitrary. The DPS line used to separate the western yellow-billed cuckoo from yellow-billed cuckoos in the east in the vicinity of Utah was the watershed boundaries along the Continental Divide. This boundary does not imply that all areas within the DPS contain suitable habitat. In fact, most areas within the DPS do not contain suitable habitat for the species because the

species is restricted to riparian habitat and most of western United States is upland habitat covered by forest, desert, shrubland, or agriculture. Riparian habitat, by definition, is limited to the banks of rivers and streams, and comprises a very small percentage of the arid West. The DPS simply shows the outer limits that one can expect to find western yellow-billed cuckoos during the breeding season and during migration to breeding areas.

We received GIS data from the State of Utah and excel spreadsheets with location data apparently derived from surveys and incidental observation within the State. We did not receive the information mentioned in the comment letter (e.g., Beason 2009, additional statewide surveys, and GIS habitat models) from the State. During the development of this proposed rule and in response to the State's comment, we independently obtained a copy of the information cited (Beason 2009, pp. 1–19). The results of that study, which surveyed areas in and around Dinosaur National Park in Utah and Colorado, did not confirm any western yellow-billed cuckoo observations. We contacted the researcher and they confirmed the information.

Colorado

(30) *Comment:* The Colorado Department of Agriculture asked to participate in the recovery of the species and is actively removing tamarisk and Russian olive and restoring native riparian vegetation.

Our Response: We appreciate this additional information and have considered this in our listing determination. This cooperation in recovering the species will be important in the development and implementation of a recovery plan for the species.

(31) *Comment:* The Water Resources Division of the Colorado Department of Natural Resources stated that riparian habitat is not threatened in Colorado and the western yellow-billed cuckoo should not be listed because adequate conservation efforts are underway.

Our Response: Riparian systems in Colorado have been highly impacted by the nonnative, invasive tamarisk and Russian olive. Many of the other threats detailed in the proposed and this final rule also apply to riparian habitats in that State. In addition, the State of Colorado contains only a small portion of both the range and population of the western DPS of the yellow-billed cuckoo. Our obligation is to review and assess the population status as a whole and not on a regional or Statewide basis.

Arizona

(32) *Comment:* The Arizona Game and Fish Department supported the Service's overall determination of the western yellow-billed cuckoo as a DPS, but stated that using morphological information in the DPS significance section weakened the argument.

Our Response: We appreciate this additional information and have considered this in our DPS analysis and listing determination. Morphological information is just one of the reasons we have determined that the western yellow-billed cuckoo is a valid DPS under our policy. In order to be more transparent in describing our rationale for our DPS determination, we included the morphological information as further evidence of the DPS. We conclude that including morphological information in the DPS *Significance* section helps to provide a complete picture of the differences between eastern and western yellow-billed cuckoos.

(33) *Comment:* The Arizona Game and Fish Department stated that they did not support listing the western yellow-billed cuckoo as it would be counterproductive to current conservation efforts.

Our Response: Some restoration projects, especially where existing poor-quality, tamarisk-dominated habitat that is occupied by western yellow-billed cuckoo is being removed and higher quality, willow-cottonwood or mesquite habitat is being planted, may require consultation with the Service in order to jointly develop appropriate measures to avoid or minimize the potential for adverse effects to the western yellow-billed cuckoo. However, the process of listing a species as threatened under the Act is not designed to curtail projects that have the potential to benefit that species, and it is unlikely that beneficial tamarisk removal and riparian restoration projects would be negatively impacted from listing the western yellow-billed cuckoo. It is more likely that listing the western yellow-billed cuckoo will complement the recovery efforts and potentially provide additional sources of funding through section 6 of the Act.

(34) *Comment:* The Arizona Game and Fish Department stated that they agreed that western yellow-billed cuckoos have declined in Arizona over the last 100 years due to habitat loss. The Arizona Game and Fish Department went on to state that the western yellow-billed cuckoo population and habitat loss have stabilized over the past 30 years and populations will increase as a result of riparian restoration on the Lower Colorado River. The Arizona Game and Fish Department stated that 4,000 acres (ac) (1,619 hectares (ha)) of habitat is scheduled for restoration, and in locations where restoration has occurred, western yellow-billed cuckoos are using the created habitat within 2 years of planting. They asked us to add references that show that western yellow-billed cuckoos have declined as a result of riparian habitat loss and degradation (they cite Noss *et al.* 1995). They also stated that there was a need to quantify the benefits of riparian habitat restoration to western yellow-billed cuckoos.

Our Response: Most locations in Arizona that have western yellow-billed cuckoo populations have not been surveyed regularly enough to provide population trend information. The only two locations with semi-regular monitoring (the Bill Williams River and the San Pedro River) both show downward trends in western yellow-billed cuckoo populations. The western yellow-billed cuckoo population on the Colorado River on the Arizona-California border appears to be increasing with the riparian restoration activities at that location. More years of survey data are needed to determine whether or not that is a long-term trend.

While the results of the riparian restoration work on the Lower Colorado River are promising, based on the scientific information available we conclude that it is too soon to tell what effect this planned restoration will have on western yellow-billed cuckoo populations. As population goals for recovery of the western yellow-billed cuckoo have not yet been established, it is not known what the overall effect of an addition of the 40 or so pairs of western yellow-billed cuckoos on the Lower Colorado River will have on the overall status of the yellow-billed cuckoo in the West. In addition, so far it appears that western yellow-billed cuckoos nesting on restoration sites tend to have lower nesting success than western yellow-billed cuckoos nesting in areas still containing healthy native riparian forests (McNeil *et al.* 2012, p. 53).

We have added citations in this final rule that show that western yellow-billed cuckoos have declined as a result of riparian habitat loss and degradation (see section in Factor A discussion). We have concluded that this is a well-documented pattern in California and Arizona.

To date it is difficult to quantify the benefit of riparian habitat restoration to western yellow-billed cuckoo populations. Most restoration efforts are carried out on a small scale in

comparison to the home-range size of the western yellow-billed cuckoo. In the Kern River Valley where riparian restoration has been ongoing for the past 30 years, the western yellow-billed cuckoo population has stabilized but has not increased. Along the Sacramento River, where several thousands of acres of riparian restoration has occurred over the past 30 years, the western yellow-billed cuckoo population has continued to decline. The one location where restoration work is appearing to have a positive effect on western yellow-billed cuckoo populations is along the Lower Colorado River, but this work is very recent and the long-term effect on western yellow-billed cuckoo populations there is still unknown. The largest positive effects for western yellow-billed cuckoos have occurred in the reservoir draw-down zones (e.g., Isabella Reservoir and Elephant Butte Reservoir), when riparian habitat has regenerated during droughts. These benefits are ephemeral, as the habitat will be inundated and lost when wet periods return.

New Mexico

(35) *Comment:* New Mexico Game and Fish requested a delay in listing so that more research can be conducted in New Mexico to better define the DPS line. They state that data from e-bird [Cornell Lab of Ornithology] and New Mexico Ornithological Society (2007) do not support difference in migration timing between eastern and western New Mexico, and cite Sechrist and Best (2012) to say that cuckoos from Pecos and Rio Grande had the same migration timing and direction. Twenty additional commenters questioned the DPS' status, indicating that the DPS was neither discrete nor significant, without providing additional information to support their comments.

Our Response: In making listing determinations under the Act, we are to rely solely on the best scientific and commercial data currently available. Our DPS policy outlines the criteria for determination of whether a segment of a vertebrate species population qualifies as a DPS. In reviewing the most current information available, we have determined that the western DPS of the yellow-billed cuckoo is valid and meets the criteria outlined in our policy. As we stated above in the **Distinct Vertebrate Population Segment Analysis** section, we understand that the area in southern New Mexico and western Texas is an area where there may be overlap between both eastern and western populations of the yellow-billed cuckoo. Our DPS policy allows for some ''mixing'' of populations, and absolute separation is not required for a population segment of a species to be considered a DPS (61 FR 4723–4725; February 7, 1996). The location and boundaries of a western DPS for the yellow-billed cuckoo has been under consideration since the Service first received a petition to list the species in 1986. As detailed in the proposed rule and this final rule, yellow-billed cuckoos on the Rio Grande above Big Bend are more similar to yellow-billed cuckoos in the West than they are to yellow-billed cuckoos in the East. Yellow-billed cuckoos on the Pecos River and in eastern New Mexico are more similar to yellow-billed cuckoos in the East than they are to yellow-billed cuckoos in the West. Peer reviewer Dr. Janice Hughes, the only avian taxonomist who has conducted research on yellow-billed cuckoos in this region, believes that the highlands between the Rio Grande and the Pecos River are the dividing line between eastern and western yellow-billed cuckoos.

As discussed above in *Comment* 14, one peer reviewer measured yellow-billed cuckoos on the Rio Grande and Pecos River and found the Rio Grande yellow-billed cuckoos to be larger than those on the Pecos River. The differences were not statistically significant, but the sample sizes were small, so a significant difference would not be expected. Also the measurements were not taken in a similar way as measurements taken by Banks (1988, pp. 473–477) and Franzreb and Laymon (1993, pp. 17–28) so they cannot be compared to measurements from those studies. At this time, a definitive study has not been completed on morphology, genetics, or behavior (including migration timing) comparing yellow-billed cuckoos on the Rio Grande and Pecos River. Until that is done, the best available science on the subject is in Franzreb and Laymon (1993, pp. 17–28) and in the opinion of Dr. Janice Hughes, which divides eastern and western yellow-billed cuckoos along the highlands separating the Rio Grande and the Pecos Rivers.

(36) *Comment:* New Mexico Game and Fish and several other commenters suggest that western yellow-billed cuckoos have been found at elevations higher than reported in the proposed rule.

Our Response: We appreciate this additional information and have considered this in our listing determination. Most of these higher elevation sightings in the Rocky Mountains are likely of migrant western yellow-billed cuckoos, though a few may refer to nesting pairs.

(37) *Comment:* New Mexico Game and Fish would like us to develop a rule under section 4(d) of the Act to allow for economic and agricultural growth in conjunction with conservation efforts, especially while developing the State's comprehensive conservation program.

Our Response: Section 4(d) of the Act allows the Secretary the discretion to issue such regulations as [s]he deems necessary and advisable to provide for the conservation of a species. The Service's standard policy (under 50 CFR 17.31(a)) for issuing prohibitions for threatened species is to apply all the prohibitions of an endangered species to a threatened species unless otherwise revoked by issuance of more specific prohibitions. In the case of the western yellow-billed cuckoo, we are in the process of reviewing whether the ''standard'' prohibitions apply or whether more specific prohibitions are appropriate. If we determine that more specific prohibitions apply and that they are necessary and advisable to provide for the conservation of the western yellow-billed cuckoo, we will issue a proposed rule under section 4(d) of the Act for public comment. However at this time, we do not have and the commenter did not provide enough information on whether a section 4(d) rule for agricultural activities is appropriate. We would be available for future discussion on potentially developing measures to maximize the conservation value of agricultural practices and develop some type of conservation mechanism with the commenter in the future; however, due to time constraints for developing a final rule we cannot currently develop and implement such measures.

(38) *Comment:* New Mexico Game and Fish stated that there was a large discrepancy between population estimates of 100–155 pairs for western New Mexico listed in the proposed rule and 7,000 individuals in the State as reported by the Partners in Flight program (PIF 2014).

Our Response: The Partners in Flight Web site for New Mexico (New Mexico Partners in Flight 2014, entire) reports that the western yellow-billed cuckoo population in New Mexico is much less than 1 percent of the total species population of 9.2 million, or less than 92,000 yellow-billed cuckoos. This was then converted to 0.1 percent of the global population, which should have been 9,200 yellow-billed cuckoos, but was transcribed or rounded to 7,000 yellow-billed cuckoos or 3,500 pairs of yellow-billed cuckoos. This is a questionable method to determine the yellow-billed cuckoo population for a State and should not be accepted as

valid. This is much higher than Howe's (1986, pp. 1–16) estimate of 1,000 pairs of yellow-billed cuckoos Statewide in New Mexico and 315 pairs for the western half of the State. Howe's estimates were made based on an estimate of available habitat and an understanding that western yellow-billed cuckoo territories were much smaller than they actually are, leading to an overestimate for New Mexico. It is likely that fewer than 1,000 pairs of western yellow-billed cuckoos existed in New Mexico in 1986. The population for western yellow-billed cuckoos estimated for the State by Hughes (1999, p. 19) was 100 to 200 pairs. The Service's estimate of 100 to 155 pairs is based on the best available science of surveys conducted over the past 10–15 years.

(39) *Comment:* The New Mexico Department of Agriculture asked that the Service address management of the western yellow-billed cuckoo as a watershed health issue and not list the species.

Our Response: Listing of the western yellow-billed cuckoo under the Act is based on the species' population status and trends, and the threats to the species. Recovery of a species will be based on criteria developed by the Recovery Team once it becomes established. Solving the threats to the western yellow-billed cuckoo is an important part of the recovery process, and watershed health will be very important when developing recovery criteria and implementing recovery actions.

(40) *Comment:* New Mexico Interstate Stream Commission commented that because western yellow-billed cuckoos are listed by New Mexico Fish and Game as a ''Species of Greatest Conservation Need'' the Service should not state that it has no protective status in New Mexico.

Our Response: Although the identification of the western yellow-billed cuckoo by the State of New Mexico as a ''Species of Greatest Conservation Need'' is encouraging, this designation is for planning purposes and provides no regulatory protective status for the species in New Mexico. Any actions or conservation measures implemented for the cuckoo as a result of its State status would be recommendations and voluntary, and would not ensure that actions or measures would be implemented.

(41) *Comment:* New Mexico Interstate Stream Commission states that if the western yellow-billed cuckoo is listed, we should develop a rule under section 4(d) of the Act for ongoing and future water management in the State. Other commenters expressed concern about the impact of listing the western yellow-billed cuckoo on water delivery.

Our Response: The disruption and changes to ''natural'' river and stream processes, which help the development and regeneration of riparian vegetation, have been identified as a threat to the species. The majority of streams and water delivery facilities within the range of the western yellow-billed cuckoo are at least partly managed by Federal entities or proposed activities that would have a Federal nexus. As a result, these Federal agencies have an obligation under section 7 the Act to conserve endangered or threatened species and their habitat. Section 4(d) of the Act states that the Secretary shall issue such regulations as [s]he deems necessary and advisable to provide for the conservation of any threatened species. New projects on Federal land or funding by the Federal government will be subject to section 7 consultations, as will reauthorization of Federal projects. Because of the interrelatedness between water management, the health of riparian habitat, and the dependence of riparian habitat by the western yellow-billed cuckoo, we are not currently considering a rule under section 4(d) of the Act for this species to limit the prohibitions of the Act for ongoing and future water management activities.

(42) *Comment:* The New Mexico Interstate Stream Commission stated that because humans do not have control over caterpillar population, lack of caterpillars should not be listed as a threat.

Our Response: Caterpillar and other insect populations can be affected by health of the riparian habitat, tree and shrub species in the riparian zone, and pesticide use (e.g., pesticide drift into the riparian zone or applying pesticides directly on the riparian zone). All of these factors are influenced by human activities at some level. Lack of an adequate food supply is a major threat for the western yellow-billed cuckoo.

(43) *Comment:* The New Mexico Interstate Stream Commission stated that climate change effects have so far not been as great as they are predicted to be in the future.

Our Response: We appreciate the New Mexico Interstate Stream Commission's comments on climate change and have considered them in our listing determination. The New Mexico Department of Game and Fish in their Comprehensive Wildlife Conservation Strategy for New Mexico (2006) stated that ''[t]he effects of climate change on ecosystems and species are likely to be exacerbated in areas that have already been substantially affected by human activities such as habitat loss and fragmentation, air and water pollution, and the establishment of invasive species.'' They also state that riparian habitat is one of the key habitats that may have the highest risk of being altered by synergistic effects of factors that influence habitats (New Mexico Department of Game and Fish. 2006, pp. 74–79).

We agree that climate change projections and prediction can be difficult due to the availability of information and variability of climate and habitat conditions over time. However, in a study looking at the recent effects of climate change on temperature and precipitation over the past 36+ years (1970–2006), Enquist *et al.* (2008, pp. 1–32) found that in New Mexico, observed climate-linked effects include declines in snowpack, earlier peak stream flows, forest mortality, and population declines in some sensitive species. To avoid issues of uncertainty associated with future climate change predictions, the study used a retrospective approach that analyzed changes over time. Their study found that: (1) 93 Percent of New Mexico's watersheds have become relatively drier over the 36+ year period; and (2) snowpack has declined in 98 percent of New Mexico's major mountain ranges and the timing of peak streamflow from snowmelt in the State is an average of one week earlier than in the 1950s. In addition, the study found that the watersheds with the highest numbers of sensitive species tend be those showing the greatest increase in moisture stress or drying and that these watersheds have already experienced climate change-linked ecological effects. We have determined that the long-term effects of climate change are and will continue to be a factor in sensitive species or habitat conservation regardless of any short-term trends.

(44) *Comment:* The New Mexico Interstate Stream Commission commented that western yellow-billed cuckoos may rely on tamarisk, like southwestern willow flycatchers do, but even if true, tamarisk beetles should not be listed as a threat to western yellow-billed cuckoos.

Our Response: Western yellow-billed cuckoos do not rely on tamarisk in the same way that southwestern willow flycatchers do. Western yellow-billed cuckoos may on rare occasions nest in tamarisk, but they forage almost entirely in native riparian habitat. Western yellow-billed cuckoos are primarily dependent on large caterpillars, which depend on cottonwoods and willows and are not found on tamarisk. On the other hand, southwestern willow

flycatchers feed on small flying insects and both nest and forage in tamarisk as long as water or super-saturated soil is in the vicinity of the nest and flying insects are available. In areas where the hydrology is still intact and will support native riparian habitat, the tamarisk beetle could assist in the restoration of the riparian zone. In areas that can no longer support willows, cottonwoods, and mesquite, the beetle could suppress the tamarisk to the point that western yellow-billed cuckoos will no longer use the habitat. In this latter case, the tamarisk beetle could be considered a threat, as spontaneous regeneration of native vegetation is difficult due to the degraded nature of the habitat and disrupted hydrologic conditions.

Texas

(45) *Comment:* The Deputy Commissioner for the Texas General Land Office stated that listing the western yellow-billed cuckoo would lead to increased economic costs and delay in the development of oil, gas, wind, and solar projects for the State. Royalties collected by the State from such activities would be reduced, and this would indirectly affect funds available for Texas public schools. The Deputy Commissioner also stated that the Service's analysis of the information is not sufficient to support listing and that the Service is only moving forward at this time with listing due to its settlement with outside litigants and not because listing is warranted under the Act.

Our Response: Under section 4(a)(1) of the Act, we are to determine if a species is endangered or threatened based on one of five listing factors. Economics or loss of revenue is not one of the factors used in determining if a species should be listed. Although we understand that listing a species as either endangered or threatened causes some regulatory oversight and the potential need for consultation, we are obligated to make such determinations solely on the threats facing the species or its habitat. Listing a species does not mean projects cannot proceed, it only means they must be implemented in a manner that still conserves the species and its habitat. In addition, because the species occurs in riparian habitat along streams, it is most likely that projects involving the development of oil, gas, wind, and solar projects would not result in significant direct impacts on the species, as these projects typically do not occur in riparian corridors.

We believe we have used the best scientific and commercial information available in coming to our decision to list the western yellow-billed cuckoo as a threatened species. The western yellow-billed cuckoo has been a candidate for listing since 2001. Although we were litigated to develop a timeframe for moving forward on the review of candidate species, the Act requires us to promptly make our evaluations for species considered candidates. Any settlements reached as a result of litigation took into consideration what was best for conservation and protection of candidate or sensitive species and were not dictated by litigants.

(46) *Comment:* The Texas Comptroller of Public Accounts stated that they were concerned that listing of the western yellow-billed cuckoo would have potential economic impacts on landowners, businesses, and communities within the boundary of the DPS in Texas. The Comptroller also stated that additional information is needed on the status of the species and that the benefits of ongoing conservation efforts for the southwestern willow flycatcher are adequate to conserve the western yellow-billed cuckoo.

Our Response: See our response to *Comment* 45 above for economic considerations in the listing process and our view on the information used to determine the status of the species. In regard to conservation measures for the southwestern willow flycatcher being adequate to conserve the western yellow-billed cuckoo, we disagree. Although the range of the southwestern willow flycatcher and the western yellow-billed cuckoo overlap to some degree and they are found in similar habitats, that is not always the case and the two species have very different habitat and ecological requirements.

Public Comments

Comments on ''Endangered'' vs. ''Threatened'' Status

(47) *Comment:* More than 12,000 commenters stated that the western yellow-billed cuckoo should be listed as ''endangered'' rather than the proposed ''threatened'' status.

Our Response: The Act defines an endangered species as any species that is currently ''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.'' Based on the available information on the range and distribution of the species, the immediacy and severity of threats facing the species, the persistence of the species throughout most of its historical range, and the rate of decline of the species, we have determined that the western yellow-billed cuckoo meets the definition of a threatened species rather than an endangered species under the Act. See the **Determination** section below for additional discussion of our rationale for a ''threatened'' determination.

(48) *Comment:* One commenter stated that the entire species (both in the eastern and western United States) should be listed as a threatened species under the Act.

Our Response: Our analysis in the rule is limited to the petitioned entity (western United States), and we have not evaluated the status of the eastern population of the yellow-billed cuckoo. Should new information become available about the status, trends, or threats facing the eastern population of the yellow-billed cuckoo, we would evaluate that information at that time, as budget and staffing allow.

Comments on the Distinct Population Segment

(49) *Comment:* One commenter stated that the western DPS of the yellow-billed cuckoo also meets significance because of persistence of population on unusual or unique ecological setting (i.e., streamside riparian areas in arid West).

Our Response: We appreciate this additional information and have considered this in our listing determination. Yellow-billed cuckoos in both the East and West nest in riparian habitat. The species in the eastern United States has a wider range of habitat use, including nesting in upland broadleaf woodlands that are not available to the species in the West. We do not consider riparian habitat as unusual or unique habitat under our DPS policy.

(50) *Comment:* Several commenters stated that there had been too many studies on the yellow-billed cuckoo and other commenters stated that there had been too few studies. Genetics and taxonomic uniqueness was a suggested area of study by one commenter.

Our Response: Although there has been much focus on research on the yellow-billed cuckoo, most of these efforts have been on survey and monitoring. Additional research activity is a common response once a species is identified for listing under the Act. However, other information, such as migratory routes, timing, and wintering ground use, has been scarce, and we agree that there are many areas of the life history, ecology, genetics, and taxonomy of the western yellow-billed cuckoo that need further research. However, in making our listing

determination, we must use the best scientific and commercial data available in coming to any conclusions on whether the species should be listed.

(51) *Comment:* One commenter stated that the eastern and western yellow-billed cuckoos may be interbreeding on the wintering grounds.

Our Response: Because yellow-billed cuckoos do not breed on their wintering grounds in South America, it is not plausible that they are interbreeding during this time.

(52) *Comment:* Several commenters do not believe that differences in migration timing between eastern and western yellow-billed cuckoos are evidence that there is a marked separation between the two groups.

Our Response: The proposed rule and this final rule identify a wide variety of factors that separates western yellow-billed cuckoos from the rest of the taxon. Migration timing is one of these factors. In general, migration timing is governed by forces of natural selection that operate over long periods of time. Given that populations of eastern and western yellow-billed cuckoos arrive on their breeding grounds, at the same latitude, a month or more apart is significant and is most likely governed by evolutionary forces. This pattern of consistently arriving on their respective breeding grounds a month or more apart is different from year to year, and variations in weather may lead to individual birds arriving on the breeding grounds a few days earlier or later than normal. Please see the **Distinct Vertebrate Population Segment Analysis** section, above, for further explanation of our rationale for determining that the western yellow-billed cuckoo is a valid DPS.

(53) *Comment:* Three commenters stated that they believed that the species was not distinct.

Our Response: The Service is listing a DPS rather than a species or subspecies. As detailed in the *Taxonomy* section under **Background** and *Discreteness* section of the **Distinct Vertebrate Population Segment Analysis** above, the western DPS of the yellow-billed cuckoo coincides with the range of the proposed subspecies boundary of the ''western'' yellow-billed cuckoo (*Coccyzus americanus occidentalis*). However, because there is some scientific uncertainty to the validity of the subspecies, the Service is not listing the subspecies, but rather is listing the western DPS.

Population Numbers

(54) *Comment:* Twelve commenters stated that there have been recent declines of breeding populations of western yellow-billed cuckoos in various locations of California, Arizona, New Mexico, and Colorado. Several additional commenters provided their personal observations in Arizona, New Mexico, and Colorado, which indicated that local populations of western yellow-billed cuckoos have declined over the last 30 years.

Our Response: These additional observations support the information that we presented in the proposed and this final listing rule regarding population trends for the species in these States.

(55) *Comment:* Nine commenters stated that the western yellow-billed cuckoo was not threatened, that they were either not declining or not declining at a rate that would lead to extinction, and that yellow-billed cuckoos were doing well in the East.

Our Response: Yellow-billed cuckoos in the East are declining at 1.4 to 1.6 percent per year over the past 43 years (Sauer *et al.* 2012, entire). Based on the best available science and data, western yellow-billed cuckoos have declined dramatically throughout their range over the past 150 years. This decline has continued in recent years, and with very few exceptions (e.g., the South Fork Kern River Valley, where the small populations appears to be stable, and the Lower Colorado River, where the population is showing an increase), it is continuing to decline. The data and information we have used in this final rule lead us to conclude that the western DPS of the yellow-billed cuckoo is threatened with extinction. No data were presented by commenters that show increasing population trends or population numbers that contradict our conclusion that the western yellow-billed cuckoo is a threatened species.

(56) *Comment:* Eight comments were received on data analysis and proposed rule preparation. Issues raised included the lack of a population viability analysis, the lack of a global population analysis, inadequate citations support for statements made in the document, not providing the names of Service biologists who reviewed data, taking a California-centric approach in the proposed rule, and only providing range maps showing the breeding season's range.

Our Response: Current available scientific data on the western yellow-billed cuckoo are not sufficient to conduct a meaningful population viability analysis. Too many of the important parameters are not known well enough for the results to be reliable. The State-by-State and region-by-region analysis of the entire range of the western DPS of the yellow-billed cuckoo is essentially a global population analysis. Every attempt has been made to be certain that citations support the statements made in the proposed and this final rule. Where we do not have specific reference support we explained our rationale based on the best available information on coming to any conclusions. It is not Service policy to list names of document authors or those who reviewed data. Much of the research that has been conducted on the western yellow-billed cuckoos has occurred in California, which may lead readers to the opinion that the proposed rule is California-centric. The winter range of the western yellow-billed cuckoo is not well-known and therefore could not be mapped.

(57) *Comment:* Several commenters stated that western yellow-billed cuckoo survey data were missing from the proposed rule or the data have been updated after the proposed rule was published (e.g., Utah, New Mexico, Arizona).

Our Response: We have considered this updated information in our final listing determination, and the information will be considered in the final critical habitat designation and future recovery plan.

(58) *Comment:* One commenter asked why western yellow-billed cuckoos are continuing to decline with all the habitat protection that has been happening over the past 25 years.

Our Response: It is true that significant habitat protection and restoration has been underway for the past 25 to 30 years. Much of this work has been done on a project-by-project basis or on a smaller scale than will likely be necessary for the stabilization and recovery of the species. Recovery goals for western yellow-billed cuckoos and their habitat will be set in the recovery plan for the species as it is developed. In some areas, such as the Sacramento River, western yellow-billed cuckoo populations have continued to decline even though significant habitat restoration activities have been carried out. Aging of the existing habitat and increased occupancy by invasive species, especially edible fig (*Ficus carica*) and black walnut (*Juglans* sp.), may be contributing factors. In addition, effects of pesticides on caterpillars may be a factor in many areas. It is indeed a concern that western yellow-billed cuckoos have declined even in areas where habitat has been protected and has either been stabilized or has increased. Further research is needed to determine the exact causes of this continued decline.

(59) *Comment:* One commenter questioned our science and asked that

all information on western yellow-billed cuckoo populations and declines should be removed from the discussion in the rule.

Our Response: The information on western yellow-billed cuckoo population and declines presented in the proposed and this final rule is based on the best available science. In making listing determinations under the Act, we must conduct a five-factor analysis on the threats facing a species based on the best available scientific and commercial information. In some cases the information on a species' status and trends is unclear or the information available is sparse. In these cases, we nonetheless must base our determinations on the best available information. In the case of the western yellow-billed cuckoo, the available information on population status and declines is appropriate to include in our discussion of the status of the species and in making our final determination on the species' listing status of threatened.

(60) *Comment:* Numerous commenters have concerns regarding survey methods, comparison of survey data, accuracy of survey counts, and changes in survey protocols over the years for the yellow-billed cuckoo.

Our Response: Please see response to *Comment* 5 above for our response to concerns over the survey protocols and other survey concerns.

Comments on Habitat Use and Species Information

(61) *Comment:* Several commenters indicated that habitat use separates eastern and western yellow-billed cuckoo populations. One commenter further stated that in eastern New Mexico and western Texas, yellow-billed cuckoos from eastern populations nest in monotypic stands of tamarisk, while western yellow-billed cuckoos do not. The commenter did not provide any specific study but based their statement on observations.

Our Response: We appreciate this additional information and have considered this in our listing determination. Additional research on this topic would be valuable. The information provided will also be considered further in recovery planning. See response to *Comment* 6, above, for additional information.

(62) *Comment:* One commenter stated that yellow-billed cuckoos select much different habitat in the East than they do in the West.

Our Response: We appreciate this additional information and have considered this in our listing determination. We recognize that habitat use is different between eastern and western populations of yellow-billed cuckoos. See our response to *Comment* 6, above, for additional discussion on habitat use in the eastern and western United States.

(63) *Comment:* One commenter stated that understory vegetation was as important to western yellow-billed cuckoos as overstory vegetation.

Our Response: As stated in the proposed listing rule and cited by reference in this final rule, the amount, size, composition, and density of habitat are important habitat selection criteria for the western yellow-billed cuckoo. Although habitat characteristics vary across the range of the species, understory vegetation is an important characteristic for the species. For example, along the Sacramento River, the size of the site, the amount of riparian habitat in each 5-mi (8-km) river segment, and the presence of young woody vegetation (understory) were the most important factors in a model explaining the distribution of yellow-billed cuckoo pairs (Halterman 1991, p. 30). Along the lower Colorado River, in a comparison of occupied versus unoccupied habitat, yellow-billed cuckoos were found at sites with denser riparian vegetation and more variation in vegetation density, and less tamarisk and shrubby vegetation, compared to unoccupied sites (Johnson *et al.* 2012, pp. 15–17).

(64) *Comment:* Two commenters stated that western yellow-billed cuckoos do not need large blocks of riparian habitat, and one commenter stated that they do not need riparian habitat at all. Another commenter stated that habitat use and patch size needed were not well-defined.

Our Response: The use of large blocks of riparian habitat for yellow-billed cuckoos in western United States is well-documented. Recent studies of habitat use using radio telemetry have shown that a western yellow-billed cuckoo will use 100 ac (40 ha) of habitat or more during the breeding season. See our response to *Comment* 63, above, for additional discussion on habitat use by the western yellow-billed cuckoo.

(65) *Comment:* Eight commenters stated that yellow-billed cuckoos were providing ecosystem services by eating caterpillars.

Our Response: We appreciate this additional information and have considered this in our listing determination. Yellow-billed cuckoos in eastern United States, where they are more abundant, may be numerous enough to control caterpillar populations. It is unlikely that the small populations in the West are able to have an impact on the caterpillar population.

Comments on Specific Habitat Areas

(66) *Comment:* Two commenters stated that water transfers from agriculture to urban areas and from the Kern River Valley to southern California were threats to the western yellow-billed cuckoo.

Our Response: We appreciate this additional information and have considered this in our listing determination. We have identified the disruption of ''natural'' stream hydrology and flows as a threat to the species. The occupied habitat for the western yellow-billed cuckoo in the South Fork of the Kern River is upstream of the control facilities at Lake Isabella. Large-scale water diversions from the Kern River do not take place until downstream of the dam. For the Kern River, the majority of water available for potential transfer to southern California is part of a ground water storage program (underground water bank). Any actions associated with this transfer of water would not affect occupied western yellow-billed cuckoo habitat upstream.

(67) *Comment:* One commenter stated that western yellow-billed cuckoo habitat was declining along the Verde River in Arizona.

Our Response: We appreciate this additional information and have considered this in our listing determination. This is consistent with the pattern of habitat loss and degradation described in the Factor A section of this document.

(68) *Comment:* Several commenters pointed out the importance of the San Pedro River (AZ) and the Gila River (AZ and NM) for western yellow-billed cuckoos.

Our Response: We appreciate this additional information and have considered this in our listing determination. The San Pedro River has the largest population of western yellow-billed cuckoos in Arizona and one of the largest in the western DPS, and the Gila River also contains an important population of western yellow-billed cuckoos in both New Mexico and Arizona.

(69) *Comment:* Commenters in Arizona, Wyoming, Montana, and Colorado all stated that their State was fringe habitat for the western yellow-billed cuckoo and did not contribute to the conservation of the species.

Our Response: Southwestern Wyoming and western Montana are at the northeastern edge of the range of the western DPS of the yellow-billed cuckoo. These areas at the margin of the

range can be very important in monitoring the health of a population, as they may become unoccupied when the population is declining and reoccupied when the population is increasing. Habitat in Colorado is important for the conservation of western yellow-billed cuckoos not only for the small breeding population, but more importantly for habitat for migrating western yellow-billed cuckoos that nest to the north in Idaho. Arizona is at the center of the range of the western DPS of the yellow-billed cuckoo, and habitat there is vital to the DPS' survival.

(70) *Comment:* One commenter mentioned that land in New Mexico is being retired from agriculture, not converted to agriculture.

Our Response: We appreciate the commenter's statement, but they did not provide specific information on the subject. Our research on agricultural land use changes for New Mexico also did not provide any specific information on the extent, location, or nature of agricultural lands being converted or retired; however, it has been estimated that over 90 percent of riparian habitat within New Mexico has been lost during the last century (Krzysik 1990, entire).

(71) *Comment:* One commenter stated that recent information shows that yellow-billed cuckoos that breed in the eastern United States then move to northwestern Mexico and breed as was speculated in another paper is wrong.

Our Response: Researchers (Rowher and Wood 2013 pp. 243–250) have recently retracted an earlier assertion that yellow-billed cuckoos bred in eastern North America and then flew to northwestern Mexico and bred a second time. We have revised our discussion on the subject in this final rule.

Comments on Factors Affecting the Species

(72) *Comment:* Three commenters addressed the threat of proposed mining operations in the Patagonia Mountains in south-central Arizona, the declining water table, and the decline in western yellow-billed cuckoo populations in that area.

Our Response: We concur that gravel mining and other mining activity can impact the western yellow-billed cuckoo and its habitat. This is a localized threat that is discussed under Factor A section of the final rule. See *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range,* for additional discussion on the threat of mining.

Grazing Impacts

(73) *Comment:* One commenter indicated that impacts to livestock ranchers are unequal east and west of the DPS line, making for unfair economic competition.

Our Response: According to the Act, we are to make listing determinations solely on the basis of the best scientific and commercial data available. The economic impact of listing is only considered when designating critical habitat for a listed species. We will consider the incremental impacts on livestock grazing operations during our designation of critical habitat for the species.

(74) *Comment:* One commenter stated that livestock grazing improves the ecological condition of riparian systems, while another stated that in the past cattle grazing was destructive, but that it was no longer a problem in riparian habitats.

Our Response: We identified past and current grazing activity in riparian areas occupied by the species to be a threat to the western yellow-billed cuckoo. We are not aware of any science or data that support the statement that livestock grazing improves the ecological condition of riparian systems. The western yellow-billed cuckoo nesting habitat is structurally complex with tall trees, a multistoried vegetative understory, low woody vegetation (Halterman 1991, p. 35), and higher shrub area than sites without western yellow-billed cuckoos (Hammond 2011, p. 48). Livestock grazing alters understory vegetation, trampling existing vegetation, reducing density, or eliminating new growth in riparian areas and thereby hampering recruitment of woody species that, when mature, provide nest sites. Furthermore, the relatively cool, damp, and shady areas favored by western yellow-billed cuckoos are those favored by livestock over the surrounding drier uplands. This can concentrate the effects of habitat degradation from livestock in western yellow-billed cuckoo habitat (Ames 1977, p. 49; Valentine *et al.* 1988, p. 111; Johnson 1989, pp. 38–39; Clary and Kruse 2004, pp. 242–243).

Controlled and seasonal livestock grazing can occur in a manner that is compatible with the management of western yellow-billed cuckoo habitat, although effective monitoring and management would most likely be needed especially in the more arid regions of the Southwest. Current grazing management practices are less harmful to riparian systems than some past practices. However, especially during droughts, riparian zones can still be grazed in a manner that may degrade riparian habitat attributes and prevent long-term health and persistence of these systems.

Habitat Loss

(75) *Comment:* One commenter stated that just because California destroyed its riparian habitat that other States should not bear the burden of listing.

Our Response: Listing determinations are based on habitat and population trends and threats. A severe threat in one portion of the range can lead to listing throughout the range. However, for the western yellow-billed cuckoo, there is abundant evidence that riparian habitat has been lost throughout the range of the species. This loss is greater in some areas than in others, but the threats to the western yellow-billed cuckoo through habitat loss, as detailed in this final rule, are widespread and not limited to California (see **Summary of Factors Affecting the Species** for additional discussion of threats affecting the species).

(76) *Comment:* Three commenters stated that the proposed rule does not show a causal link between habitat loss and population declines.

Our Response: We disagree. The data and information utilized for the proposed and final rules show a strong link between the declines in the western DPS of the yellow-billed cuckoo and riparian habitat. The **Historical and Current Status** section of the proposed rule, which is incorporated (by reference) into this final rule, lists numerous examples where riparian forests were removed and the western yellow-billed cuckoo population declined. In addition, literature is referenced in the rule that provides abundant additional supporting examples connecting loss of habitat to western yellow-billed cuckoo population declines. Factor A under the **Summary of Factors Affecting the Species** section in this final rule details the threats to riparian habitat both in the past and present.

(77) *Comment:* Three commenters said that riparian habitat may have declined by 90 percent in the past, but that it now is increasing. One commenter said that there is no evidence that habitat is being adversely affected by natural or manmade factors.

Our Response: Riparian habitat is increasing in some areas, but at the same time is decreasing or becoming less suitable in other areas. The overall trend throughout the range of the western yellow-billed cuckoo is not known. Simply measuring the extent of riparian habitat from one time period to

the next will not tell what the effect on western yellow-billed cuckoos will be. Tens of thousands of acres of riparian habitat still exist on the Lower Colorado River, but almost all of it, with the exception of the recently planted restoration sites, is comprised only of tamarisk that does not support western yellow-billed cuckoos. Tamarisk domination has occurred on many river systems through the range of the western yellow-billed cuckoo. Along other streams like the Sacramento River, other invasive species, such as edible fig and black walnut, have become dominant, and these areas now provide lower quality habitat for western yellow-billed cuckoos even though the overall acreage of riparian habitat has risen over the past 20 years. In many river systems in the Great Basin, Russian olive (*Elaeagnus angustifolia*) is now the dominant species, and it has reduced the habitat value for western yellow-billed cuckoos. In response to the second part of the comment, the discussion under the section *The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range* details the effect that human activities have had and are continuing to have on riparian systems throughout the range of the western yellow-billed cuckoo.

(78) *Comment:* One commenter asked that all statements regarding threats from water projects and water management should be removed from the document.

Our Response: Threats from water projects and water management are significant threats as detailed in the proposed and this final rule. As such, discussion of these threats is appropriate. See discussion under the *Habitat Loss from Dams and Alteration of Hydrology* section for additional information.

Drought

(79) *Comment:* One commenter stated that western yellow-billed cuckoos had declined because of the drought and will recover now that the rains have returned.

Our Response: While drought may have a negative effect on western yellow-billed cuckoo populations, the declines in the western yellow-billed cuckoo's range and populations have occurred through both wet and dry periods over the past 150 years.

Pesticides and Disease

(80) *Comment:* One commenter stated that dichlorodiphenyltrichloroethane (DDT) does not thin eggshells and that western yellow-billed cuckoo eggshells in the West are thicker because there is more calcium in the West.

Our Response: There is a large body of literature linking environmental DDT and its derivatives (e.g., dichlorodiphenyldichloroethylene (DDE)) to eggshell thinning in birds. Calcium deficiency can cause eggshell thinning in bird eggs, but this effect has not been demonstrated through region-by-region comparisons or a population-to-population comparisons. Trees and shrubs rarely show the effects of calcium deficiency within either the eastern or western range of the yellow-billed cuckoo in North America. Yellow-billed cuckoos would obtain calcium from their prey, which would obtain calcium from the leaves they eat. It is not clear that environmental calcium is more available in riparian zones in the West than it is in the East. It is also unclear as to what effect an abundance of environmental calcium has on yellow-billed cuckoo bird eggshells. There are no scientific studies that the Service is aware of on this topic.

(81) *Comment:* One commenter stated that rotenone used by Game and Fish agencies to kill fish may have injured western yellow-billed cuckoos.

Our Response: Although rotenone is classified as a broad-spectrum pesticide and has been used to control insects, we are not aware of any information that the use of the chemical as a piscicide (control of fish) has harmed the western yellow-billed cuckoo. The exposure risk of rotenone to terrestrial birds is low, and studies have shown that it would take levels of consumption of fish, vegetation, and/or water that are not physically possible or probable to reach a lethal dose (Finlayson *et al.* 2000, p. 193). The commenter did not provide information on the possible mechanism behind this perceived threat.

(82) *Comment:* One commenter stated that West Nile virus was a reason that yellow-billed cuckoos have declined.

Our Response: As discussed below in the *Disease or Predation* section, the U.S. Geological Survey's National Wildlife Health Center has identified the yellow-billed cuckoo as a species that is subject to the effects of West Nile virus and the Center for Disease Control's (CDC) Vector-Borne Disease Web site reports that West Nile virus has been documented in a dead yellow-billed cuckoo (Center for Disease Control 2012). The information on the impact of West Nile virus to the western yellow-billed cuckoo does not suggest that it has undergone a precipitous decline coincident with the relatively recent arrival of West Nile virus in western North America, and no scientific data indicate this disease as a major factor in the western yellow-billed cuckoo's decline.

(83) *Comment:* One commenter stated that most pesticides are used in highly populated areas by people who do not follow label instructions.

Our Response: While this statement may be true, western yellow-billed cuckoos rarely occur in or near highly populated areas and are much more likely to be affected by application of pesticides on adjacent agricultural fields. See ''Pesticides'' section, below, for further information on the impacts of pesticides on the western yellow-billed cuckoo.

(84) *Comment:* Two commenters mentioned, and included references on, the new threat of neonicotinoid pesticides, which are extremely toxic to caterpillars.

Our Response: Neonicotinoid pesticides are systemic chemicals that are taken up through various plant parts and can be distributed through a plant's tissues. These chemicals can be applied to a plant as a seed coating, through soil contact, through irrigation water, or as a foliar spray. Many of these chemicals are long-acting, with half-lives up to 2 years. Plant tissues that have been treated are toxic to both sap-sucking (e.g., aphids and true bugs) and foliage-eating insects (e.g., caterpillars, katydids, grasshoppers, and beetles). Many of these foliage-eating insects are potential prey of the western yellow-billed cuckoo. This information has been incorporated into this final rule.

Additional Threats

(85) *Comment:* Several commenters stated that there were threats to western yellow-billed cuckoos that were not discussed in the proposed rule. These included threats from recreational shooting, threats from solar generation sites, and threats from wind power.

Our Response: All the activities may impact the western yellow-billed cuckoo. In our evaluation of threats, we identified those threats that rise to the level of being a threat to the continued existence of the species. Although these activities affect the species, we do not find that these activities would have a significant effect on the species.

Comment on Regulatory Mechanisms

(86) *Comment:* Five commenters stated that Factor D, inadequacy of existing regulatory mechanisms, is also a significant threat. Other commenters stated that the proposed rule ignored the Federal regulatory mechanisms that protect western yellow-billed cuckoos and their habitat.

Our Response: The proposed and this final rule present a detailed discussion of Federal, State, and international laws and regulations that provide some protection and conservation benefit to the western DPS of the yellow-billed cuckoo. The western yellow-billed cuckoo has continued to decline, and its habitat has continued to be lost and degraded. In determining if a species is to be added to the List of Endangered or Threatened Wildlife, the species needs only to be threatened by one of the five factors listed in section 4(a)(1) of the Act. According to our analysis of the best scientific and commercial information available, the western yellow-billed cuckoo is threatened by both Factors A and E. Our evaluation of Factor D discusses the extent to which the inadequacy of each existing regulatory mechanism exacerbates the threats evaluated in Factors A and E. An individual regulatory mechanism may reduce a threat to a greater or lesser extent, but none separately or in combination reduces any of the threats to the point that they are no longer threats to the western yellow-billed cuckoo.

Comment on Cumulative Effects

(87) *Comment:* Several commenters stated that the proposed rule needs more emphasis on cumulative effects.

Our Response: We recognize that cumulative effects are important. Cumulative effects are discussed in several sections of the proposed and this final rule, including the section of water management, grazing, climate change, and pesticide use. Please see those sections for additional information on the impacts of cumulative effects on the western yellow-billed cuckoo.

Comment on Conservation Measures

(88) *Comment:* Eighteen commenters discussed conservation measures and indicated that benefits from conservation measures were not discussed and that conservation measures for other species should ''take care'' of the western yellow-billed cuckoo. Others stated that there was a need to quantify the benefits of riparian habitat restoration to western yellow-billed cuckoos.

Our Response: Conservation measures and their effect on western yellow-billed cuckoos are discussed in the proposed and this final rule. The majority of currently implemented conservation measures focus on species other than the western yellow-billed cuckoo. Conservation measures that are carried out for other species may have a positive effect on the western yellow-billed cuckoo, but western yellow-billed cuckoos, while being a riparian obligate species, have different ecological requirements than other species that are already listed (e.g., southwestern willow flycatcher and least Bell's vireo). As a result, it has not been proven that the conservation measures outlined by commenters would ''take care'' of the western yellow-billed cuckoo and its habitat. In regards to quantification of the benefits habitat restoration, we readily acknowledge that any well-developed and maintained restoration efforts will most likely benefit the western yellow-billed cuckoo and its habitat. However, we have found that, in some cases, even when habitat restoration has been completed, the benefit to the species has not been clear, as some areas still remain unoccupied or their numbers continue to decline.

(89) *Comment:* Two commenters were concerned that the listing of the western yellow-billed cuckoo would disrupt recovery efforts for the southwestern willow flycatcher and the Rio Grande silvery minnow (*Hybognathus amarus*).

Our Response: We disagree. Although additional coordination would be required to ensure that the habitat and species needs for all three species was occurring for a potential recovery action, we do not believe that that process would favor or harm any one single species in particular. In fact, by implementing recovery efforts for two or more species it would present opportunities that may be larger in scale or allow greater flexibility than smaller disjointed efforts for single species conservation.

Comments on Potential Exemptions (Section 4(d) Rule)

(90) *Comment:* Several commenters requested that rules under section 4(d) of the Act be included in the listing to exempt the following activities: (a) Oil and gas development and other economic activities; (b) riparian restoration activities; (c) all existing conservation activities; and (d) land and water use activities.

Our Response: Section 4(d) of the Act allows the Secretary the discretion to issue such regulations as [s]he deems necessary and advisable to provide for the conservation of a species. The Service's standard policy (under 50 CFR 17.31(a)) for issuing prohibitions for threatened species is to apply all the prohibitions applicable to endangered species to a threatened species unless otherwise revoked by issuance of more specific prohibitions. In the case of the western yellow-billed cuckoo, we reviewed whether the ''standard'' prohibitions apply or whether more specific prohibitions might be appropriate for the western yellow-billed cuckoo. Based on our review, we have determined that modifying our ''standard'' regulations for a threatened species would not be necessary and advisable in providing for the conservation of the western yellow-billed cuckoo. If new or additional information is received that may suggest that a rule issued under section 4(d) of the Act may be appropriate, we would review such information and, if appropriate, issue a proposed section 4(d) rule for public comment prior to developing any final section 4(d) prohibitions for the species.

Listing Process Public Input

(91) *Comment:* Eight comments were received on the listing process. This included statements regarding: Inadequate public feedback, that listing decisions should reflect customs and cultures of the local community, that court settlements should not be a factor in listing decisions, and that a finding of warranted but precluded should have been maintained as a possibility.

Our Response: In accordance with the Act and the Administrative Procedure Act (5 U.S.C. Subchapter II), and our regulations in Title 50 of the Code of Federal Regulations (CFR), we have solicited public comment on our proposed listing action. The comment period was reopened twice to insure that the public had ample opportunity to comment on the proposed rule. Listing endangered or threatened species is a process that examines threats to the species. Although customs and cultures of local communities are important considerations, they are not part of the listing process under the Act. Court settlements were not a factor in preparation of the proposed rule to list the western DPS of the yellow-billed cuckoo as a threatened species. The court settlement simply guaranteed that the Service would do an analysis of the western DPS of the yellow-billed cuckoo and determine if it should be listed as an endangered species or a threatened species or not listed. Regarding maintaining the warranted-but-precluded category as a listing possibility, the western yellow-billed cuckoo was previously found to be ''warranted but precluded,'' in 2001; the next step in the listing process is to either propose it for listing (and finalize the proposal if appropriate) or make a finding that the species is no longer warranted for listing.

Use of the Best Available Scientific and Commercial Information

(92) *Comment:* Ten commenters said that the science used in the proposed

rule is flawed, inaccurate, and biased and is not the best available science. Several commenters indicated that the Service should only select the ''best'' data from the data that was available.

Our Response: All available sources of data on distribution and abundance of yellow-billed cuckoos in the western United States were consulted, reviewed, and used in the proposed rule. We also provided the proposed rule for peer review to five knowledgeable individuals with scientific expertise that included familiarity with the yellow-billed cuckoo and its habitat, biological needs, and threats. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the listing of the western DPS of the yellow-billed cuckoo. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve this final rule. Additional data were provided by commenters, including Federal and State wildlife and resource agencies, but none of that additional data changed the pattern of western yellow-billed cuckoo distribution and abundance presented in the proposed rule. In response to the selection of data, we conclude that it is much better to present and discuss all available pertinent data in our determinations, rather than be subjective and select which data to present and review. We have made our determination in this final rule solely based on the best available scientific and commercial data available as required by section 4(b)(1)(A) of the Act.

(93) *Comment:* One commenter stated that the Service did not cite papers in the proposed rule that were cited in the 12-month finding.

Our Response: The proposed rule is an updated and more thorough review of the best available information on the western yellow-billed cuckoo and is an independent document from the 12-month finding (66 FR 38611; July 25, 2001). Additional research has been completed on the species, and additional peer-reviewed papers have been published and reports written over the past 13 years that supersede previously published paper and reports. The new information in some cases has confirmed, updated, or revised older research. These are all reasons that some papers that were cited in the 12-month finding are not directly cited in the proposed rule. However, information and research cited in the 12-month finding is still part of the decisional record for the western yellow-billed cuckoo and included (by reference) in this final rule.

(94) *Comment:* One commenter said that two recent peer reviewed papers (Villarreal *et al.* 2014 and Wallace *et al.* 2013) that were not cited in the proposed rule are not valid.

Our Response: The Service appreciates the commenter drawing our attention to these papers that had published after the proposed rule was published in the **Federal Register** (October 3, 2013). We will evaluate these peer-reviewed papers, which deal with modeling western yellow-billed cuckoo habitat using remote sensing, and with the commenter's concerns in mind, we will consider them in our final critical habitat designation as appropriate.

(95) *Comment:* One commenter stated that they did not like the use of data from the Arizona Breeding Bird Atlas (Corman and Wise-Gervais 2005, pp. 202–203) in the proposed rule.

Our Response: Arizona Breeding Bird Atlas data (Corman and Wise-Gervais 2005, pp. 202–203) were used in the proposed rule to demonstrate that western yellow-billed cuckoos are found on a small percentage of the landscape in Arizona. Breeding bird atlases are an important source of information on bird distribution and abundance in areas where they are available. To not present these data would be contrary to our requirement to use the best available science in listing decisions.

Property Rights

(96) *Comment:* Two commenters stated that listing the western yellow-billed cuckoo will restrict property rights and access to public lands.

Our Response: This comment was presented generally with no specific instances or information. It is very unlikely that listing the western yellow-billed cuckoo will have the effect of limiting access to public lands. Direct human disturbance is not seen as a major threat to the western yellow-billed cuckoo as discussed in the final rule. It is unclear what the commenter meant by restriction of property rights, but it is not likely that listing the western yellow-billed cuckoo will have an adverse effect on private property ownership or use.

Summary of Changes From Proposed Rule

Based upon our review of the public comments, comments from other Federal and State agencies, peer review comments, and any new relevant information that may have become available since the publication of the proposal, we reevaluated our proposed rule and made changes as appropriate. Other than minor clarifications and incorporation of additional information on the species' biology, this final rule has not changed significantly from the proposed rule. Changes to the final rule include: (1) Updates to the life-history information of the species' vocalizations and how these changes may have affected survey results for the species; (2) updates to survey data (though no new populations have been located and no major increases have been noted in the past 2 years); (3) updates to the threats in Factor A; and (4) the addition of threats of neonicotinoid pesticides in Factor E.

We did receive information from the State of Washington regarding habitat use in the Pacific Northwest including western Oregon, western Washington, and southwestern British Columbia. This information updates our *Habitat Use and Needs* section of the proposed listing rule. In describing habitat use by the species, we stated that the species requires large blocks of habitat in riparian landscapes for breeding. In the description of breeding habitat, the document generally focuses on riparian areas in arid environments as this is where the majority of confirmed breeding now occurs. The result gives the impression that the species does not currently use or has not historically used more moist riparian areas such as northern California, western Oregon, western Washington, and southwestern British Columbia, Canada, as breeding habitat. Although breeding for the western yellow-billed cuckoo has not been recently confirmed in Oregon, Washington, and British Columbia, these more moist areas are within the historic breeding range of the species. Recent observations indicate that western yellow-billed cuckoos occasionally occur in these areas and the possibility of breeding in Oregon, Washington, and British Columbia cannot be ruled out at this time. We are not including the *Habitat Use and Needs* section in this final rule, but are updating the information here and incorporating the remainder of the discussion contained in the proposed rule by reference.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR 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; 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. Each of these factors is discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The decline of the western yellow-billed cuckoo is primarily the result of riparian habitat loss and degradation. Within the three States with the highest historical number of western yellow-billed cuckoo pairs, past riparian habitat losses are estimated to be about 90 to 95 percent in Arizona, 90 percent in New Mexico, and 90 to 99 percent in California (Ohmart 1994, pp. 276–281; DOI 1994, p. 215; Noss *et al.* 1995, pp. 37, 46; Greco 2008, p. 5). Many of these habitat losses occurred historically, and although habitat destruction continues, many past impacts have subsequent ramifications that are ongoing and are affecting the size, extent, and quality of riparian vegetation within the range of the western yellow-billed cuckoo. The connection between habitat loss and the decline of western yellow-billed cuckoos is thoroughly documented in California (Gaines and Laymon 1984, pp. 49–80). These adverse impacts to the western yellow-billed cuckoo's habitat including habitat loss and degradation are occurring now and are anticipated to continue for decades to come.

Moreover, these impacts are often subtle. As described in the Habitat Use and Needs section in the proposed rule, during the breeding season the habitat of the western yellow-billed cuckoo consists of expansive blocks of riparian vegetation containing trees of various ages, including in particular larger, more mature trees used for nesting and foraging. In order for these areas to remain as viable western yellow-billed cuckoo habitat, the dynamic transitional process of vegetation recruitment and maturity must be maintained. Without such a process of ongoing recruitment, habitat becomes degraded and is eventually lost. In our discussion below, we identify human impacts to riparian vegetation as resulting in current and ongoing destruction and modification of existing and future potential habitat for the western yellow-billed cuckoo.

Past actions by humans have resulted in changes to the landscape, the hydrology, or both such that they prevent the riparian plants that are the basis of the species' habitat from growing at all. The consequences of these past actions may have initially resulted in destruction or modification of then-existing riparian habitat; however, once that habitat is lost, the changed conditions (such as changed hydrologic regime) also prevents riparian habitat from regenerating, even in the absence of other impacts. For example, channelization—through manmade levees or other constructs, or through channel incising as a consequence of other actions—may leave the geographical area where riparian plants once grew (such as the watercourse's floodplain) physically untouched, but the altered hydrology prevents riparian plant species from germinating and growing.

Principal causes of riparian habitat destruction, modification, and degradation in the range of the western yellow-billed cuckoo have occurred from alteration of hydrology due to dams, water diversions, management of riverflow that differs from natural hydrological patterns, channelization, and levees and other forms of bank stabilization that encroach into the floodplain. These losses are further exacerbated by conversion of floodplains for agricultural uses, such as crops and livestock grazing. In combination with altered hydrology, these threats promote the conversion of existing primarily native habitats to monotypic stands of nonnative vegetation, which reduce the suitability of riparian habitat for the western yellow-billed cuckoo. Other threats to riparian habitat include long-term drought and climate change. These threats are summarized in a recent detailed review of the literature on the subject (Poff *et al.* 2011, pp. 1241–1254). Water management and delivery throughout the western United States is contentious, and resolving issues related to water allocation is difficult and often a lengthy, heavily contested process. The exact timeframe for resolving water management and delivery issues and their impact on the western yellow-billed cuckoo and its habitat would vary on the location, resource demands, sensitive habitat or species concerns, stakeholders, and amount of water available. As a result, we would expect that resolving water issues for the various uses (agriculture, urbanization, wildlife, and tribal interests) in the west will be a lengthy ongoing process and not be resolved in the near future (10–20 years) and may take substantially longer considering the increased demands and the effects of climate change. The Factor A threats are described in more detail below. Moreover, past and ongoing impacts to the species' habitat are working in combination with other threats, which are discussed in greater detail in Factors C and E, below.

Habitat Loss From Dams and Alteration of Hydrology Dams

Several researchers and scientific organizations including the Service reviewed the following effects of human modification of natural hydrological processes on riparian habitat, including those from dams (Poff *et al.* 1997, pp. 769–784; Greco 1999, pp. 36–38; National Academy of Sciences (NAS) 2002, pp. 145–150; Service 2002, Appendix I, pp. 1–12). Dams result in an immediate effect of destroying riparian structure and functioning due to habitat displacement from dam construction and by permanent inundation, sometimes flooding miles of upstream riparian areas. This results in the physical loss of riparian vegetation. In the absence of vegetation, the western yellow-billed cuckoo cannot breed, feed, or find shelter. Current and future releases of water downstream from dams at unnatural rates of flow or timing that differ from preconstruction hydrologic circumstances, or at too frequent or too infrequent intervals, may lead to flooding or desiccation beyond the tolerance limits of the native riparian vegetation, thus resulting in loss of habitat of the western yellow-billed cuckoo.

Dam construction has been occurring since the settlement of western North America with its peak in the mid-20th century. These include most major western rivers, many of which have a series of dams, and include, but are not limited to, the Sacramento, Kern, San Joaquin, Mojave, Snake, Gila, Salt, Verde, and Rio Grande, including 25 major reservoirs built on the Colorado and Green Rivers alone between the 1930s and 1970s (Richter *et al.* 1998, p. 332). In northern Mexico, these rivers include the Río Conchos, Yaqui, and Mayo, Río Bambuto, Río Bravo, Tubutama, La Reforma, Cuchujaqui River in Alamos, Aconchi and Baviacora in Río Sonora, and Upper San Pedro River in Sonora (Instituto del Media Ambiente y el Desarrollo Sustentable del Estado de Sonora (IMADES) 2003, p. 4; Kelly and Arias Rojo 2007, pp. 2–3; Cornell *et al.* 2008, p. 96).

There are now dozens of large dams and scores of smaller dams on rivers throughout the range of the western yellow-billed cuckoo. Today, the rate of building new dams has slowed because most of the highest quality dam sites

already have dams constructed on them. There were proposals to build two dams on Cottonwood Creek, one of the major tributaries of the Sacramento River (USACE 1982), but it is not clear when or if these dams will be built. A larger current threat is the enlargement (raising of dams or control structures) of existing dams. The enlargement of Terminus Dam on the Tule River in California by 21 ft (6.5 m) in height was completed in 2004 (Barcouda *et al.* 2006, p. 12), and proposals to enlarge Shasta Dam on the Sacramento River by up to 18.5 ft (5.7 m) in height and increasing its storage capacity (Reclamation 1999, pp. 3–8; Reclamation 2013, pp. ES 15–22) and Friant Dam on the San Joaquin River by up to 140 ft (43 m) in height are being explored (Reclamation 2003, pp. 3.1–3.8), and the raising of Lake Isabella on the Kern River by the USACE is in the final stages of implementation (USACE 2012, pp. 1–4). Larger dams with additional storage would likely flood potential western yellow-billed cuckoo habitat upstream and cause additional hydrologic disruption downstream.

While the amount of habitat lost within the construction zone of a dam is relatively small, far greater amounts of habitat are destroyed in the areas of inundation and through the ongoing effects of the amount and timing of water releases through the dam operation, which affects both upstream and downstream habitats. Ongoing downstream effects to riparian habitat from dams include changes in sediment transport due to sediment retention behind the dams so that channels below a dam become increasingly ''sediment starved.'' This situation causes vertical erosion (downcutting), which can lead to loss of river terraces that sustain riparian vegetation (NAS 2002, pp. 145–150; Poff *et al.* 2009, pp. 773–774; Poff and Zimmerman 2010, pp. 196–197).

Ongoing operations of large dams can also dampen the magnitude of normal high flows, thus preventing cottonwood germination (Howe and Knopf 1991, p. 218), and dewater downstream reaches, causing substantial declines of riparian forests (NAS 2002, pp. 145–150). For example, Groschupf (1987, p. 19) found that almost all cottonwoods and over half of all willow trees were eliminated from one waterway in Arizona that was exposed to repeated large releases of water from a dam. This situation reduced the density of western yellow-billed cuckoos from 13 per 100 ac (40 ha) before the flooding to 3 per 100 ac (40 ha) after the flooding (Groschupf 1987, p. 19). In another example, a study of the San Joaquin River from downstream of the Friant Dam to the Merced River confluence found that, between 1937 and 1993, the area of riparian forest and scrub decreased 28 percent, from 6,787 to 4,914 ac (2,727 to 1,989 ha), and the herbaceous riparian vegetation decreased from 4,076 to 780 ac (1,650 to 316 ha) (Jones and Stokes Associates, Inc. 1998, Chap. 5, pp. 1–2). These losses are most likely attributed to reduced stream flow down the river as a result of water diversions.

In the case of the San Joaquin River, efforts are under way for restoring a more natural functioning hydrologic system and to restore riparian habitat (Reclamation 2012, pp. 7–8). Generally, in the absence of ongoing dam operations, where areas are allowed to flood and deposit sediment, the habitat is likely to regenerate naturally. However, because of the way the majority of dams are operated, the ability for the stream courses to promote natural regeneration and maintenance of riparian habitat has been greatly diminished. These impacts are happening now and are likely to continue without changes to water release strategies and management.

After the completion of the larger dams on the Colorado River system starting in the 1930s, limited pulse flows reached the lower Colorado River in Mexico for nearly 50 years, resulting in the loss of cottonwood–willow forests and the establishment of tamarisk (Glenn *et al.* 2001, pp. 1175–1186; Nagler *et al.* 2005, pp. 1843–1844). Local decline of the western yellow-billed cuckoo and other riparian birds has been attributed to that habitat loss and degradation (Hinojosa-Huerta *et al.* 2008, p. 81). Additionally, along the Río Altar in northern Mexico, completion of the Cuauhtémoc Dam and Reservoir (Presa Cuauhtémoc) in 1950 diverted surface water and contributed to increased vegetation clearing for agriculture, degradation of mature cottonwood forests, and subsequent declines in distribution and abundance of riparian bird species associated with these forests (Flesch 2008, p. 43), including the western yellow-billed cuckoo, which is known to occur there. In addition to past habitat losses, the altered hydrology caused by dams continues to have an ongoing impact on riparian habitat.

While alteration of hydrology due to dam construction and other water supply projects has been widely implicated in the loss and degradation of downstream riparian habitat for the western yellow-billed cuckoo (Gaines and Laymon 1984, p. 73; Greco 1999, pp. 36–38; Greco 2012, pp. 8–9), some dams have resulted in temporary habitat expansion for the western yellow-billed cuckoo within the immediate upstream influence of the associated reservoirs. For example, one of the largest concentrations of western yellow-billed cuckoo in New Mexico occurs at the inflow to Elephant Butte Reservoir on the middle Río Grande (Sechrist *et al.* 2009, p. 1; Ahlers and Moore 2011, pp. 19–20). Western yellow-billed cuckoo numbers increased following several years when water levels receded and riparian vegetation expanded into the exposed area of the reservoir pool. The western yellow-billed cuckoo population there continues to increase, likely as a result of continued drawdown from long-term drought that allows maturation of the riparian forest into suitable breeding habitat (Ahlers and Moore 2011, pp. 19–20). Drought patterns are cyclical, and, when wetter conditions return to the region, Elephant Butte Reservoir likely will be refilled. When this happens, approximately 92 percent of 44 to 87 pairs of western yellow-billed cuckoos there (detected during the 2007 and 2008 surveys) would be displaced through inundation (Reclamation 2009, pp. 64–65).

The threat to the western yellow-billed cuckoo's habitat from fluctuating water levels behind dams is likely to occur elsewhere in the range of the western yellow-billed cuckoo. In California, the State's second largest population of western yellow-billed cuckoos occurs within the inflow delta footprint of Lake Isabella, a dammed reservoir on the Kern River. Breeding western yellow-billed cuckoos are also found at other reservoir inflow deltas, such as Horseshoe Reservoir on the Verde River (Dockens and Ashbeck 2011a, p. 1) and the Tonto Creek and Salt River inflows to Roosevelt Lake in Arizona (Salt River Project 2002, pp. 61–67).

The temporary gain in riparian habitat at the inflow of reservoirs can be beneficial to the western yellow-billed cuckoo by providing large expanses of additional nesting and foraging habitat during a sequence of low-water years. However, the value of such habitat is affected by fluctuating water levels between years. Drastically fluctuating water levels with alternating inundation and desiccation cycles have been associated with fluctuations in populations of western yellow-billed cuckoos that breed in reservoir inflow sites (Laymon and Williams 2002, pp. 12–13; Henneman 2008, pp. 12–13). For example, along the Kern River, western yellow-billed cuckoo numbers increased during low reservoir levels for multiple years when vegetation recolonized the drawdown area (Laymon *et al.* 1997, p.

10), but western yellow-billed cuckoos moved to other sites during a wet year when lake levels rose and flooded out habitat (Launer *et al.* 1990, p. 10; Halterman *et al.* 2001, p. 20). When the water receded, it took up to 2 years for western yellow-billed cuckoos to return to breed in the area; however, this return was at reduced numbers even though the habitat returned to previous levels (Laymon and Williams 2002, pp. 12–13; Henneman 2008, pp. 12–13). The reason for this delay in recolonization needs further study (Henneman 2010, pp. 12–14).

The water level continues to remain below capacity at Lake Isabella due to dam safety concerns (Stewart 2012, pers. comm.). Once Lake Isabella fills again to capacity, the riparian habitat that has since formed at the inflow and that supports western yellow-billed cuckoos will become inundated, at least periodically (Whitfield 2012, pers. comm.), thereby impacting the habitat of the western yellow-billed cuckoo. In addition, the USACE and the USFS are developing a proposal and have completed a final environmental impact statement on options to repair dam deficiencies and raise the height of the dam an additional 16 ft (4.9 m) (Isabella Lake Dam Safety Modification Project Environmental Impact Statement Final October 2012). Pursuant to section 7 of the Act, consultation was completed for the proposed action, but the western yellow-billed cuckoo was not a species addressed in the biological opinion.

Lake Isabella is currently managed to minimize incidental take of the southwestern willow flycatcher (flycatcher) (*Empidonax traillii extimus*) from reservoir operations and recreation using reasonable and prudent measures developed during consultation with the Service (Service 1996, 1999, and 2005, entire). Some of these measures to conserve the flycatcher may be beneficial to the western yellow-billed cuckoo; however, the eventual inundation of the drawdown area of the reservoir will result in some degree of temporary habitat loss and degradation under current operational guidelines and may result in permanent loss of habitat for the western yellow-billed cuckoo if the proposed dam raise is implemented. Similar periods of inundation and drawdown, resulting in corresponding development and destruction of suitable western yellow-billed cuckoo habitat, occur at Roosevelt Lake (Salt River Project (SRP) 2002, entire).

In Arizona, following the high water levels of 1983–1984 and 1986 on the Bill Williams River Delta, which is influenced by fluctuating water levels from dams in the Colorado River system (Rosenberg *et al.* 1991, pp. 18–23), the western yellow-billed cuckoo numbers declined by 70–75 percent. Habitat has since improved on the Bill Williams River Delta, but western yellow-billed cuckoo numbers remained low for several years (Laymon and Halterman 1987a, pp. 10–18). The actual mechanism that influences the yellow-billed cuckoo's response to fluctuations in water levels is unknown, but loss of prey has been implicated; areas that were inundated normally support ground-nesting invertebrates, such as katydids and sphinx moths, that western yellow-billed cuckoos feed upon, and it may take several years for these prey populations to rebound (Laymon and Williams 2002, pp. 12–13; Henneman 2008, pp. 12–13).

In Sonora, Mexico, large dams exist on the Mayo, Yaqui, and Sonora Rivers (Villaseñor-Gomez 2006, p. 107). We do not have information on the magnitude or frequency of effects, positive or negative, from water management activities, to the western yellow-billed cuckoo in those locations. However, we have no reason to believe that the dams are managed in a substantially different manner in Mexico than dams in the southwestern United States, and the effects to riparian habitat are expected to be similar.

Despite some positive effects of dams on increasing western yellow-billed cuckoo habitat in a few areas, these gains in habitat are only temporary, and overall, the net effect of dams on the species has been negative. As such, dams and their ongoing operations are a threat to the western yellow-billed cuckoo over most of its range. This threat has resulted in substantial historical losses of western yellow-billed cuckoo habitat resulting in a curtailment of the species' range. The ongoing operation of these dams is likely to have minor impacts to the species at any given location, but because so many of the waterways within the range of the species have been dammed, we believe this threat has a substantial cumulative impact on the habitat of the western yellow-billed cuckoo, especially when considered with other threats. Moreover, we expect the operation of these dams will continue in a similar manner for decades to come, and thus we expect this threat to be an ongoing impact to the western yellow-billed cuckoo's habitat.

The areas where the floodplain is still hydrologically connected to the river and has relatively unconstrained riverflow, such as in some areas of California and Sonora, Mexico, support the highest number of western yellow-billed cuckoos (Villaseñor-Gomez 2006, pp. 107–108; Greco 2008, p. 6; Greco 2012, pp. 8–9). For example, the Sacramento River from Red Buff to Colusa has a highly dynamic mosaic of habitat patches of varying ages that form, disappear, and reform in response to active river channel processes that operate over decades (Greco 2008, p. 6; Greco 2012, pp. 8–9). Although this section of the Sacramento River is also affected by altered hydrology, it is far enough below Shasta Dam and below several major undammed tributaries, such as Cottonwood Creek and Battle Creek, that it still has flood events every few years that help support riparian habitat processes (Werner 2012, pers. comm.).

The river provides habitat characteristics that Laymon (1998, p. 4) indicated were important for the western yellow-billed cuckoo in California, such as a meandering system with young riparian habitat that, compared to mature woodlands, provides preferred nesting sites; high productivity of invertebrate prey; and reduced predator abundance (Laymon 1998, p. 4). Another example of relatively intact riparian habitat in the range of the western yellow-billed cuckoo is found in the highlands of central Sonora, Mexico, which supports occupied habitat of the western yellow-billed cuckoo. Villaseñor-Gomez (2006, p. 108) found that the maintenance of the natural flooding regimes due to the limited number of water development structures has allowed riparian vegetation along sections of the Sonora, Moctezuma, and Sahiaripa Rivers to persist in very good condition in some areas. Most of the known occurrences of western yellow-billed cuckoo in central Sonora are associated with these regions.

We conclude that dams continue to affect both the downstream and upstream habitat through alteration of flows. These effects can include widely fluctuating water levels at inflow sites that inundate nesting habitat, limit food resources, and flood or desiccate habitat (Poff *et al.* 1997, pp. 769–784; Greco 1999, pp. 36–38; NAS 2002, pp. 145–150; Service 2002, Appendix I, pp. 1–12). Downstream effects caused by sediment retention behind dams, or sediment scouring and removal caused by excessive water releases, do not mimic the natural flow regimes and often result in the inability for cottonwoods to become established or regenerate and provide habitat for the western yellow-billed cuckoo. Woody and herbaceous debris accumulates in the absence of these scouring flows,

increasing fire risk and intensity (Stromberg and Chew 2002, pp. 195–219) (see section on Wildfire below).

Dams and their flow modifications have ongoing effects to habitat and will likely do so for decades to come, further modifying the habitat of the western yellow-billed cuckoo. Therefore, direct and indirect destruction of riparian habitat resulting from altered hydrology from past dam-building activities continues to contribute to the curtailment of the range of the western yellow-billed cuckoo. Additionally, as a result of future predicted climate change (see Climate Change section below), the climate within the range of the western yellow-billed cuckoo will likely become drier, which will increase the demand for water storage and conveyance systems, which in turn will likely increase the frequency and severity of impacts on western yellow-billed cuckoo habitat (Stromberg *et al.* 2013, pp. 411–415).

Surface and Ground Water Diversion

Water extractions, both from surface water diversions and ground water pumping, can negatively affect riparian vegetation (Poff *et al.* 1997, pp. 769–784; Service 2002, Appendix I, pp. 1–8). Water diversions and withdrawals can lower ground water levels in the vicinity of riparian vegetation. Because ground water and surface water are generally connected in floodplains, lowering ground water levels by only about 3 ft (1 m) beneath riparian areas is sometimes sufficient to induce water stress in riparian trees, especially in the western United States (NAS 2002, p. 158). Physiological stress in native vegetation from prolonged lower flows or ground water results in reduced plant growth rate, morphological change, or mortality, and altered species composition dominated by more drought-tolerant vegetation, and conversion to habitat dominated by nonnative species (Poff *et al.* 1997, p. 776). These effects reduce and degrade habitat for the western yellow-billed cuckoo for foraging, nesting, and cover.

Adverse effects of excessive ground water extraction on riparian vegetation have been well-documented in the southwestern United States. Case histories on many river systems in Arizona including the Santa Cruz River and on the Owens River in California have documented the connection between overutilization of the ground water, lowering of the water table, and the decline and eventual elimination of riparian vegetation (Zektser *et al.* 2005, pp. 400–401; Webb and Leake 2006, pp. 317–320). Ground water extraction is also affecting river flows and riparian vegetation along rivers that support the western yellow-billed cuckoo in Mexico, including the Río Conchos in Chihuahua (Kelly and Aria-Rojo 2007, p. 174; Cornell *et al.* 2008, p. 98) and the Río Altar in Sonora, where the quantity of surface water declined greatly between 2000 and 2007 (Flesch 2008, pp. 44–45). Therefore, ground water extraction and water diversions create an ongoing threat to western yellow-billed cuckoo habitat.

The hydrologic regime (stream flow pattern) and supply of (and interaction between) surface and subsurface water is a driving factor in the long-term maintenance, growth, recycling, and regeneration of western yellow-billed cuckoo habitat (Service 2002, p. 16). As streams reach the lowlands, their gradients typically flatten and surrounding terrain opens into broader floodplains (Service 2002, p. 32). In these geographic settings, the stream-flow patterns (frequency, magnitude, duration, and timing) will provide the necessary stream-channel conditions (wide configuration, high sediment deposition, periodic inundation, recharged aquifers, lateral channel movement, and elevated ground-water tables throughout the floodplain) that result in the development of riparian habitat suitable for use by western yellow-billed cuckoos (Poff *et al.* 1997, pp. 770–772; Service 2002, p. 16).

Allowing the river to flow over the width of the floodplain, when overbank flooding occurs, is integral to allow deposition of fine moist soils, water, nutrients, and seeds that provide the essential material for plant germination and growth. An abundance and distribution of fine sediments extending farther laterally across the floodplain and deeper underneath the surface retains much more subsurface water, which in turn supplies water for the development of the vegetation that provides western yellow-billed cuckoo habitat and microhabitat conditions (Service 2002, p. 16). The interconnected interaction between ground water and surface water contributes to the quality of the riparian vegetation community (structure and plant species) and will influence the ability of vegetation to germinate, regenerate, and maintain its foliage density, vigor, and species composition (Arizona Department of Water Resources 1994, pp. 31–32).

In many instances, western yellow-billed cuckoo breeding site occur along streams where human impacts are minimized enough to allow more natural processes to create and maintain the habitat. However, there are also breeding sites that are supported by various types of supplemental water including agricultural and urban runoff, treated water outflow, irrigation or diversion ditches, reservoirs, and dam outflows (Service 2002, p. D–15). Although the waters provided to these habitats might be considered ''artificial,'' they are often important for maintaining the habitat in appropriate condition for breeding western yellow-billed cuckoos within the existing environment.

Encroachment of Levees and Flood Control and Bank Stabilization Structures Into the River Channel and Floodplain

Other alterations in river hydrology with ongoing effects on western yellow-billed cuckoo habitat include river channelization, construction of levees, bank stabilization, and placement of any flood control structures that encroach into the river and its floodplain. These actions result in direct loss of habitat from construction and from maintenance activities that remove woody vegetation that has become established on the structures. Furthermore, these structures are effective, by design, at severing the hydrologic connection of the river's main channel and the river's immediate floodplain, thereby preventing overbank flooding. By preventing overbank flooding, levees and other similar structures reduce the amount of water available to riparian vegetation in the floodplain, which results in desiccation and eventual loss and degradation of riparian habitat (Vogl 1980, pp. 84–86; NAS 2002, p. 155; Greco 2012, pp. 8–9). Such effects are less destructive, however, for those levees located farther from the stream system, such as those outside the meander belt of a river (Greco 2012, p. 4).

As an illustrative example, we provide a brief summary of how river channelization, construction of levees close to the river, and rock riprap armoring along the levees have caused destruction and modification of western yellow-billed cuckoo habitat on the Sacramento River, one of the most substantial historical nesting and foraging habitat areas for the western yellow-billed cuckoo. The Sacramento River is now disconnected from ecological processes that both renew and restore riparian and aquatic habitats (Laymon and Halterman 1987a, pp. 11–14; Halterman 1991, pp. 1–2; Greco 2008, p. 6; Greco 2012, pp. 8–9). More than one-half of the Sacramento River's banks within the lowermost 194 mi (312 km) of river have now been rip-rapped by 40 years of bank protection (Service

2000, pp. 26–29). Rock riprap armoring a river reach often changes the river dynamics and leads to channel downcutting and erosion immediately downstream from the riprap. Therefore, riprapping banks leads to the need for more riprapping.

Channelizing the river and severing the connection to the floodplain has severely altered the natural disturbance regime that would have allowed riparian habitat to regenerate now and in the future (Poff *et al.* 1997, pp. 769–784; Greco 2008, p. 6; Greco 2012, pp. 8–9). The result is that much of the river's remaining riparian habitat is modified, and now occurs in narrow, disconnected, linear strips (Service 2000, pp. 26–29; Halterman *et al.* 2001, p. 4) that are not utilized by the western yellow-billed cuckoo for breeding (Gaines 1974, p. 204; Greco 2012, p. 9). With the example of the Sacramento River, nesting western yellow-billed cuckoos no longer occur south of Colusa as the river has been channelized and riprapped from that point into the Sacramento-San Joaquin River Delta. These flood control and bank stabilization structures also keep the riparian habitat from regenerating and maturing. The factors that reduce western yellow-billed cuckoo breeding in these areas are not well-understood, but reductions of breeding population have been attributed to lack of patches of adequate size for nesting (Greco 2012, pp. 8–9), increased predators, and the species' inability to use highly isolated patches (Halterman 1991, pp. 33–38), as discussed under Factor E. The Sacramento River is but one of many rivers within the range of the western yellow-billed cuckoo where these activities have destroyed and modified riparian habitat and where the ramifications of these past actions are continuing to impact the western yellow-billed cuckoo's habitat today. These ongoing impacts will likely continue for decades to come.

An additional pervasive threat is the design of open-channel flood control channels with inappropriately smooth roughness coefficients. This creation over-scours the floodplains and requires removal of woody riparian vegetation that regenerates on floodplains, which in turn leads to floodplains with no western yellow-billed cuckoo habitat (Greco 2013, pp. 707–717).

Transportation Systems

Similarly, transportation systems have directly and indirectly altered a large number of riparian areas in western North America (NAS 2002, p. 182). Road and rail systems are frequently sited along rivers, and often entail removing riparian vegetation for construction of the roadbed, and modifying local hydrology to reroute surface water and ground water. Bridges or culverts require abutments along the bank to provide roadway support. Because abutments and roadbeds physically constrain the stream, future lateral adjustments by the stream, which can affect floodplain dynamics, are effectively eliminated, which reduces and degrades riparian habitat (NAS 2002, p. 182). Such impacts result in additional destruction and modification of habitat for the western yellow-billed cuckoo. In comparison with construction of dams and altered hydrology, this threat, by itself, is less likely to result in severe impacts to riparian habitat. However, this threat is but one of many that, in combination, results in substantial changes to physical and hydrological properties of a watercourse, which in turn contributes to a substantial curtailment in the habitat of the western yellow-billed cuckoo.

Gravel Mining

Other past and ongoing effects to riparian habitat result from gravel mining (Kondolf *et al.* 2001, pp. 54, 59). Extraction of gravel, primarily for construction products, typically occurs along rivers and adjacent floodplains where gravel deposits are naturally found. Large amounts of gravel removal from the stream and active floodplain result in channel downcutting or incision, which affects groundwater levels, frequency of overbank flows, bank stability, and the extent and character of riparian vegetation of specific stream reaches (Collins and Dunne, 1989, pp. 213–224; Kondolf 1995 pp. 133–136; NAS 2002, p. 179). Some examples of downcutting on streams in California that historically had, but no longer have, populations of western yellow-billed cuckoos, include: Cache Creek, Yolo County (15.0 ft (4.6 m) average and 26.0 ft (8.2 m) maximum downcutting); Merced River, Merced County (5.9 ft (1.8 m) average and 7.8 ft (2.4 m) maximum downcutting); Putah Creek, Yolo County (7.8 ft (2.4 m) average and 15.0 ft (4.6 m) maximum downcutting); Russian River, Sonoma County (11.4 ft (3.5 m) average and 17.9 ft (5.5 m) maximum downcutting); and Santa Clara River, Ventura County (15.6 ft (4.8 m) average and 20.2 ft (6.2 m) maximum downcutting) (Kondolf *et al.* 2001, p. 50).

Furthermore, gravel extraction creates a knickpoint (a sharp change in channel slope) that typically erodes upstream in a process known as headcutting, which has the potential to propagate upstream for miles on the main river and its tributaries. As headcuts migrate upstream, the incision propagates upstream (Kondolf *et al.* 2001, p. 49). This process creates ongoing and future impacts to habitat from past as well as current gravel mining operations. Similar to the effects of manmade levees when they disconnect floodplain habitat from the active river channel, artificial channel incision as a result of gravel mining and similar activities reduces overbank flooding. This situation reduces the hydrological connection to the floodplain (Kondolf *et al.* 2001, p. 56), thereby resulting in subsequent loss and degradation of riparian habitat for the western yellow-billed cuckoo, throughout its range, including Mexico (Cornell *et al.* 2008, p. 98). The effects of incision and channel erosion are further exacerbated where gravel mining occurs in sediment-starved reaches below dams (Kondolf *et al.* 2001, p. 10). We expect past and ongoing gravel mining activities, either alone or in combination with other hydrological changes in riparian areas, to continue to modify habitat and further curtail the range of the western yellow-billed cuckoo for decades.

In conclusion, dams, channelization, and other manmade features that alter the watercourse hydrology and encroach into the active channel and floodplain are threats to the habitat of the western yellow-billed cuckoo because they, separately or in combination, significantly reduce and degrade nesting and foraging habitats. The natural processes that sustain riparian habitat in these and similar dammed and channelized river systems in the American West and in northwestern Mexico have been altered, resulting in only fragments or remnants of formerly large tracts of native riparian forests that no longer support breeding western yellow-billed cuckoos or support them in fewer numbers. The multiple effects from altered hydrology comprise the most widespread and greatest magnitude of current threats to habitat that supports the western yellow-billed cuckoo. Such processes continue to modify habitat and further curtail the range of the western yellow-billed cuckoo. Moreover, we expect these alterations in the hydrology to continue to affect habitat of the western yellow-billed cuckoo into the future.

Habitat Loss and Degradation From Agricultural Activities

Following the effects from alterations in hydrology in severity, conversion of riparian areas for agricultural crops and livestock grazing has been, and continues to be, a major contributor to

riparian habitat loss and degradation (NAS 2002, p. 161; Johnson *et al.* 2007, p. 61).

Large areas of cottonwood–willow floodplain vegetation have been converted to agricultural uses, further reducing the extent of habitat available to western yellow-billed cuckoos for breeding (Swift 1984, pp. 225–226; Rosenberg *et al.* 1991, pp. 18–23). For example, within areas that support the western yellow-billed cuckoo, clearing for agricultural uses occurred extensively in the past. On the floodplains of the Sacramento River (Greco 1999, pp. 2, 107), riparian habitat was reduced from 775,000 ac (314,000 ha) in the 1850s to less than 18,000 ac (7,287 ha) by 1977 (Swift 1984, p. 226). Clearing for agriculture is also extensive along the lower Colorado River (Rosenberg *et al.* 1991, pp. 18–23), San Pedro River, Gila River (Swift 1984, p. 226), Río Grande, and several river courses in northern Mexico including, but not limited to, the Río Yaqui, Río Mayo, Río Bambuto, Río Tubutama, and Río Sonora (Russell and Monson 1998, p. 11; IMADES 2003, p. 4; Villaseñor-Gomez 2006, p. 108). Clearing also occurred along the coasts of Sinaloa and southern Sonora, Mexico, resulting in massive losses of thorn forest to industrial agriculture (Rohwer *et al.* 2009, p. 19054).

Although most riparian and thorn scrub habitat losses largely stem from past agricultural clearing, effects from cultivated agricultural lands are ongoing. Agricultural lands continue to dominate much of the remaining riparian landscape, particularly along the Sacramento (Greco 1999, pp. 94, 104, 107), parts of the Gila, and lower Colorado Rivers (Johnson *et al.* 2007, p. 207); along the latter, 65 percent of western yellow-billed cuckoo survey sites are bordered on at least one side by agriculture fields (Johnson *et al.* 2007, p. 61). Riparian areas are sometimes viewed as a potential source of plant and animal pests, a source of shade that may reduce crop yields, and competition for scarce water resources (NAS 2002, pp. 170–171). For example, in the Salinas Valley in California, a vigorous program is under way to comply with food safety practices that involve the clearing of riparian habitat adjacent to certain types of crops in an effort to eliminate wildlife presence, which has been linked to contamination of crops with a virulent strain of the bacteria *Escherichia coli* (Beretti and Stuart 2008, pp. 68–69; Gennet *et al.* 2013, pp. 236–242). While western yellow-billed cuckoos do not currently breed along the Salinas River (Gaines and Laymon 1984, p. 52), if these same rules are applied to farmland along the Gila, Rio Grande, Sacramento, and Colorado Rivers, western yellow-billed cuckoo habitat could be eliminated to meet these food safety concerns.

Accidental fire from farm workers operating machinery or burning weeds sporadically escapes into adjacent riparian habitat. Recent fires on western yellow-billed cuckoo and southwestern willow flycatcher conservation properties occurred in 2011, burning 58 ac (24 ha) and 6 ac (2 ha), respectively, within the Fort Thomas Preserve, on parcels owned by the Salt River Project and U.S. Bureau of Reclamation. Both fires were determined to be human-caused, likely from farm workers burning weeds along irrigation drains (SRP 2011, p. 39).

Other ongoing effects from cultivated agriculture on the western yellow-billed cuckoo are addressed under Factor E. These include fragmentation of habitat into smaller, more widely disjunct patches; ongoing influence of agriculture on riparian bird community composition; and effects from pesticides, which can negatively impact insect prey populations of the western yellow-billed cuckoo.

Habitat Loss and Degradation From Livestock Grazing Activities

Domestic livestock grazing is a traditional agricultural land use practice in the southwestern United States since the first Spanish settlement along the Rio Grande in New Mexico in 1598 (Little 1992, p. 88; Clary and Kruse 2004, p. 239). Livestock grazing continues to be a widespread agricultural use of riparian areas in the western United States and is one of the most common sources of past and ongoing riparian habitat degradation (Carothers 1977, p. 3; Rickard and Cushing 1982, pp. 2–4; Cannon and Knopf 1984, p. 236; Klebenow and Oakleaf 1984, p. 202; Swift 1984, pp. 225–226; Clary and Webster 1989, pp. 1–2; Schultz and Leininger 1990, pp. 298–299; Bock *et al.* 1993, p. 300). Livestock grazing occurs in western yellow-billed cuckoo habitat along sections of the middle Rio Grande in New Mexico (Lehman and Walker 2001, p. 12), Río Conchos (Cornell *et al.* 2008, p. 96), Río Bambuto, Tubutama, La Reforma, and Cuchujaqui River in Alamos, Aconchi and Baviacora in Río Sonora, and upper San Pedro River (IMADES 2003, p. 4), and several other rivers in central Sonora, Mexico (Villaseñor-Gomez 2006, p. 108). Grazing also occurs extensively along watercourses in a protected reserve on the Río Aros and Río Yaqui in Sonora, Mexico, where the western yellow-billed cuckoo has been documented (O'Brien *et al.* 2008, p. 8). Grazing intensity in northern Sonora, Mexico, is generally much higher than in adjacent Arizona (Balling 1988, pp. 106–107; Flesch 2008, pp. 44–45), which leads to greater degradation of riparian habitat than in Arizona.

The Service (2002, Appendix G, pp. 5–7) and Krueper *et al.* (2003, p. 608) reviewed the effects of livestock grazing, primarily in southwestern riparian systems. The frequency and intensity of effects vary across the range of the species, due to variations in grazing practices, climate, hydrology, ecological setting, habitat quality, and other factors (Service 2002, Appendix G, p. 1). However, these effects generally include the removal and trampling of vegetation and compaction of underlying soils, which can inhibit germination and change hydrology (Rea 1983, p. 40; Belsky *et al.* 1999, pp. 419–431) and promote the dispersal of nonnative plant species. Such effects are most significant when riparian areas have been subject to overuse by livestock (NAS 2002, pp. 24, 168–173). Overuse occurs when grazed vegetation does not recover sufficiently to maintain itself and soils are left bare and vulnerable to erosion. Over time, livestock grazing in riparian habitats, combined with other alterations in streamflow, typically results in reduction of plant species diversity and density and may increase the distribution and density of nonnative tamarisk by eliminating competition from native cottonwood and willow saplings, which are preferred forage for livestock (Krueper *et al.* 2003, p. 608).

Long-term cumulative effects of livestock grazing involve changes in the structure and composition of riparian vegetation (Service 2002, Appendix G, pp. 5–7), which may affect suitability of habitat for western yellow-billed cuckoo breeding and prey population abundance. The western yellow-billed cuckoo nesting habitat is structurally complex with tall trees, a multistoried vegetative understory, low woody vegetation (Halterman 1991, p. 35) and higher shrub area than sites without western yellow-billed cuckoos (Hammond 2011, p. 48). Livestock grazing alters understory vegetation, reducing height and density or eliminating new growth in riparian areas, and thereby hampering recruitment of woody species that, when mature, provide nest sites. Furthermore, the relatively cool, damp, and shady areas favored by western yellow-billed cuckoos are those favored by livestock over the surrounding drier uplands. This preference can

concentrate the effects of habitat degradation from livestock in western yellow-billed cuckoo habitat (Ames 1977, p. 49; Valentine *et al.* 1988, p. 111; Johnson 1989, pp. 38–39; Clary and Kruse 2004, pp. 242–243).

Removal, reduction, or modification of cattle grazing has resulted in increases in abundance of some riparian bird species. For example, Krueper (1993, pp. 322–323) documented responses of 61 bird species, most of which increased significantly 4 years after removal of livestock grazing in Arizona's San Pedro River Riparian National Conservation Area. The bird species guilds that increased most dramatically were riparian species, open-cup nesters, Neotropical migrants, and insectivores, all species that share characteristics with the western yellow-billed cuckoo. The western yellow-billed cuckoo numbers in the study increased, although not significantly (p=0.13) (Krueper *et al.* 2003, p. 612), but their survey methodology was not designed to detect western yellow-billed cuckoos. Recovery of vegetation in response to grazing removal in that study was quickest and most pronounced in the lower vegetation layers, the most accessible to grazing cattle. Thus, this situation would allow a greater number of seedlings and saplings of cottonwoods and other nest trees to attain maturity as suitable nesting sites.

In another example, livestock grazing was terminated along portions of the South Fork Kern River at the Kern River Preserve in the 1980s, and western yellow-billed cuckoos increased in number in the years following livestock removal. Smith (1996, p. 4) contended that termination of grazing at the Kern River Preserve was responsible for the dramatic increase in riparian vegetation, which was concurrent with the increase in western yellow-billed cuckoo numbers. These examples suggest that even severely degraded riparian systems can recover quickly, in at least some cases, after livestock removal (Krueper *et al.* 2003, p. 615), and that damage to riparian vegetation from grazing is at least partly reversible. They also illustrate the extent to which livestock grazing destroys and modifies nesting and foraging habitat of the western yellow-billed cuckoo.

In conclusion, most of the direct loss of habitat from agricultural conversion has occurred in the past, but ongoing agricultural activities, in whole or in combination with other impacts, especially those that result in changes in a watercourse's hydrology, have resulted in the curtailment of nesting and foraging habitat for the western yellow-billed cuckoo by restricting or preventing the growth of riparian plants, and such activities present an ongoing threat. Most of the current impacts from agricultural land uses arise from livestock overgrazing in riparian areas. Riparian vegetation can recover relatively quickly from these effects after livestock removal (Smith 1996, p. 4; Krueper *et al.* 2003, p. 615). However, without proper management to reduce overgrazing, ongoing overgrazing will continue to contribute to habitat modification in the range of the western yellow-billed cuckoo into the future.

Habitat Loss and Degradation Due to Conversion to Nonnative Vegetation

Throughout most of its range, habitat for the western yellow-billed cuckoo is threatened by the conversion of native riparian woodlands to riparian vegetation dominated by tamarisk and other nonnative vegetation. The major threat from this habitat conversion is the change from vegetation that supplies the western yellow-billed cuckoos with essential food and adequate thermal cover to vegetation that does not provide these necessary components of habitat for the western yellow-billed cuckoo. The establishment and persistence of tamarisk is often, but not always, aided by altered hydrology, as described above. Altered hydrology is not the cause for establishment and persistence of other types of nonnative vegetation; therefore, we present information on nonnative vegetation in this separate section.

Tamarisk is the most widespread nonnative woody plant species found in habitat for the western yellow-billed cuckoo. Glenn and Nagler (2005, pp. 420–423) provide most of the following overview of tamarisk. Tamarisk is present in nearly every southwestern riparian plant community, but varies in dominance from stream to stream. On streams where altered hydrology can no longer support native species, it has replaced native plant communities entirely, but occurs at a low frequency on other streams. Tamarisk was introduced into western North America in the 1800s to serve as ornamental windbreaks, and for erosion control and other purposes. Several species escaped cultivation and have since spread rapidly. The center of tamarisk distribution is currently Arizona, New Mexico, and Utah, and it has spread throughout most of the range of the western yellow-billed cuckoo at least as far north as the Yellowstone River in Montana in the Rockies, and at least as far south as the Yaqui River Valley in Sonora, Mexico. Recent studies in the northwest have located major populations of tamarisk in southwestern Idaho, and eastern Washington and Oregon. Models based on projected climate change predict that this invasive species will become more dominant in this region over the next 100 years (Kerns *et al.* 2009, pp. 200–215). Tamarisk also occurs west to the Owens, San Joaquin, and Sacramento Rivers in California, although it is still nearly absent from the mainstem Sacramento River in California and suitable habitat west of the Cascades in Oregon and Washington.

Tamarisk also occurs as isolated individuals along sections of the Sonora, Moctezuma, and Sahiaripa Rivers in Sonora, Mexico, where the hydrology has been little altered by human modifications (Villaseñor-Gomez 2006, pp. 107–108). Its presence is highly variable within sections of the Río Conchos in Chihuahua, Mexico, and becomes dominant in some reaches of that river (Kelly and Arias Rojo 2007, pp. 177–178; Cornell *et al.* 2008, p. 4).

The threshold (in terms of percent tamarisk) for abandonment of a riparian system by western yellow-billed cuckoos is not known. They are not found in areas that are totally dominated by tamarisk with the complete lack of willows or cottonwoods. In California, two native-dominated areas occupied in 1977 by several pairs of western yellow-billed cuckoos had, by 1986, converted to monotypic stands of tamarisk and were found to be uninhabited by western yellow-billed cuckoos. Above Laguna Dam on the Colorado River in 1977, at least three pairs of western yellow-billed cuckoos occupied a 30-ac (12-ha) site that was approximately 20–40 percent willow (Laymon and Halterman 1987a, p. 12). By 1986 no western yellow-billed cuckoos were detected on the site where the dominant vegetation had become tamarisk, with less than 1 percent willow cover. In the vicinity of Picacho State Recreation Area, on the California side of the Colorado River, in 1977, 21 western yellow-billed cuckoos were found in 297 ac (120 ha) of a 230-ft-wide (70-m-wide) willow forest (Gaines and Laymon 1984, p. 72). By 1986, tamarisk and aquatic vegetation dominated this area, and no western yellow-billed cuckoos were found in the 12 ac (5 ha) of scattered willow–cottonwood habitat that remained (Laymon and Halterman 1987a, pp. 12–13).

Human disturbance, such as water diversion, flood control, vegetation clearing, and improper grazing management, often facilitates replacement of native vegetation with tamarisk (Kerpez and Smith 1987, pp.

1–5; Hunter *et al.* 1988, p. 113; Rosenberg *et al.* 1991, pp. 18–23). Altered hydrologic regimes (flooding or reduction in water flows from dams) has disrupted natural flooding events that are essential for maintaining native riparian ecosystems (Vogl 1980, pp. 84–86; Rosenberg *et al.* 1991, pp. 18–23), and the disruption (usually elimination) of flooding tends to favor tamarisk. In contrast to native cottonwoods, tamarisk does not need flooding to regenerate (Kerpez and Smith 1987, pp. 1–5).

Tamarisk is also tolerant of high salt levels, which can be present in river systems as a combined result of water diversions that lower the near-surface ground water and irrigation water runoff that contains high levels of dissolved salts (Kerpez and Smith 1987, pp. 1–5; Busch and Smith 1993, pp. 186–194). This higher tolerance to water stress and salt accumulation is a principle mechanism by which tamarisk has become dominant on some regulated western rivers (Glenn and Nagler 2005, p. 439). In addition, tamarisk takes salts from the ground water and exudes them from its leaves, rendering the soil even more unsuitable for germination of native riparian vegetation. This is a significant problem in streams with artificially reduced streamflows where salts accumulate and are not flushed from the system. These factors favor regeneration of tamarisk over native trees and shrubs and are an ongoing threat. Additional areas of native habitat are continuing to be lost to this process. In summary, the persistence and expansion of tamarisk-dominated habitat is the result of multiple forms of ongoing human-related disturbances, which result in degradation of native-dominated riparian habitat, thus reducing its suitability as breeding habitat for the western yellow-billed cuckoo.

Other nonnative tree and shrub species have become established within the range of the western yellow-billed cuckoo. In western Colorado and Utah, Russian olive (*Elaeagnus angustifolia*) has become established and is a dominant tree species in many riparian systems. Giant reed (*Arundo donax*), common edible fig (*Ficus carica*), and the Himalayan blackberry (*Rubus discolor*) are some of the more conspicuous nonnative plants widely established along the Sacramento River, with Himalayan blackberry dominating the understory at some restoration sites (Borders *et al.* 2006, p. 310). Along the Sacramento River, western yellow-billed cuckoos were far less likely to be detected at sites with an understory dominated by Himalayan blackberry than sites with a predominant native understory. Himalayan blackberry may prevent establishment of native understory species due to its dense growth habit (Hammond 2011, pp. 48–49). Nesting of the western yellow-billed cuckoo has not been documented in riparian stands dominated by giant reed, common fig, or Himalayan blackberry that lack at least some native canopy trees.

In conclusion, because of the absence or near absence of nesting by western yellow-billed cuckoos in nearly monotypic stands of tamarisk and other nonnative vegetation, the available literature suggests that conversion of native or mixed (native and nonnative) riparian woodlands to nearly monotypic stands of tamarisk and other nonnative vegetation, coupled with the inability of native vegetation to regenerate under altered hydrological conditions, is a significant threat to the western yellow-billed cuckoo now and in the future. Nonnative vegetation, such as tamarisk, occurs across most of the range of the western yellow-billed cuckoo; its establishment can be caused by altered hydrology or other disturbances, which are widespread throughout the range. We expect nonnative vegetation to increasingly modify and curtail habitat for the western yellow-billed cuckoo within a majority of its range in the United States and northern Mexico into the future.

Use of Tamarisk by Western Yellow-Billed Cuckoos and the Spread of the Introduced Tamarisk Leaf Beetle Into the Southwest

Western yellow-billed cuckoos use habitat with some tamarisk component for nesting in southern California, Arizona, and western New Mexico, but are not found in monotypic stands of tamarisk. Western yellow-billed cuckoo presence in tamarisk-dominated habitats does not necessarily equate to habitat suitability (Sogge *et al.* 2008, p. 149; Hammond 2011, p. 50), and additional research is needed to determine productivity, survivorship, physiological condition, and food availability in these habitats.

Tamarisk can add to foliar cover that contributes toward reducing temperatures in riparian areas (Paxton *et al.* 2011, p. 259). Even relatively small decreases in foliar cover may render a site unsuitable for nesting western yellow-billed cuckoos (Paxton *et al.* 2011, p. 260). Removal of tamarisk in drainages occupied by western yellow-billed cuckoos can have unintended negative consequences if the removal leaves little or no woody vegetation and native riparian vegetation is unable to reestablish. The available literature that pertains to riparian restoration in New Mexico and Arizona (Poff *et al.* 1997, pp. 769–784; Glenn and Nagler 2005, pp. 439–441; Sogge *et al.* 2008, pp. 151–152; Stromberg *et al.* 2009, pp. 181–182) suggests that restoration of natural hydrological processes, rather than direct removal programs, would be a more effective method for promoting regeneration of native riparian vegetation and diminishing the presence of tamarisk. However, tamarisk removal programs coupled with native riparian plantings can speed up the restoration process assuming that the hydrologic system will support the native vegetation.

Tamarisk leaf beetle insects (leaf beetles) (*Diorhabda* spp.) were released into many locations throughout the southwest to control tamarisk. Leaf beetles are now spreading within the more arid range of the western yellow-billed cuckoo in Nevada, Utah, Arizona, New Mexico, and Texas. Defoliation of tamarisk by the beetles occurs in the summer months when western yellow-billed cuckoos are in the process of nesting. Tamarisk leaf beetles could eventually occur throughout the western United States and northern Mexico (Tracy *et al.* 2008, pp. 1–3). The future effects of the beetle introductions to the western yellow-billed cuckoo are unknown. If beetles succeed in killing tamarisk, western yellow-billed cuckoo numbers may decline in areas where the hydrology is no longer capable of supporting a native riparian habitat and the numbers may increase in areas where native riparian vegetation is able to become reestablished.

Wildfire

Historically, wildfire was uncommon in native riparian woodlands (Busch and Smith 1993, pp. 186–194). However, the lack of scouring floods on regulated and unregulated rivers has resulted in the accumulation of fuel on the floodplain, which increases fire risk and intensity (Stromberg and Chew 2002, pp. 195–219). Water withdrawal, dams, climate change, drought, and human use also contribute toward an increased fuel load and probability of wildfire occurrence. Most fires today are human-caused (Service 2002, p. L–8). In degraded habitat with tamarisk the threat of fire may be greater. Tamarisk ignites quickly, further increasing the incidence of periodic fires. Exacerbating the immediate loss of native trees from fire, tamarisk recovers more quickly than native trees (Glenn and Nagler 2005, pp. 435–436). Along the Rio Grande River in New Mexico and Texas, wildfire has been documented as destroying, degrading, or setting back

successional stages of vegetation development of western yellow-billed cuckoo habitat (Sproul 2000, in litt., p. 3). In summary, the alteration of riparian systems through changes in hydrologic functioning and the introduction of nonnative tamarisk have increased the incidence of wildfire into western yellow-billed cuckoo habitat. These fires further degrade, isolate, or fragment western yellow-billed cuckoo habitat.

Environmental Impacts of Cross-Border Foot Traffic in the Southwest

The environmental impact caused by cross border foot traffic has been increasingly occurring in more fragile and remote areas. The number of U.S. Border Patrol apprehensions of border crossers varies annually. Between October 1, 1999, and September 30, 2012, a yearly average of 333,517 border crossers were apprehended by the United States Border Patrol in the Tucson Sector, which does not account for the many others who were not caught (U.S. Border Patrol 2013, p. 1). Impacts associated with border crossings include creation of erosion and watershed degradation, loss of vegetation and wildlife, and human-caused wildfire (Defenders of Wildlife 2006, pp. 1–42). Drainages used by border crossers include the San Pedro River, Santa Cruz River, Cienega Creek, and many remote drainages in the mountain ranges of southeastern Arizona.

Human-caused wildland fires have been particularly damaging to areas of riparian habitat in Arizona, especially within 100 mi (161 km) of the United States-Mexico border where border crossers are known to set fires to divert law enforcement agents. Border crossers are also responsible for campfires that can escape and spread as wildfires. At least 2,467 wildfires began along the Arizona border with Mexico from 2006 to 2010 (Government Accounting Office 2011, p. 1). Federal officials have officially investigated only 77 of those fires. Of the fires investigated, 30 were started by border crossers. The resulting environmental impacts include the expansion of nonnative plant species, degraded endangered species habitat, and soil erosion.

Climate Change

Climate change may be impacting the western yellow-billed cuckoo. Climate change is discussed here under Factor A because, although it may affect the western yellow-billed cuckoo directly by creating physiological stress, the primary impacts of climate change on the species are expected to be through changes in the availability and distribution of western yellow-billed cuckoo habitat.

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). The term ''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 (IPCC 2013a, p. 1450). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (for example, temperature or precipitation) that persists for an extended period, whether the change is due to natural variability or human activity (IPCC 2013a, p. 1450).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has increased since the 1950s. Examples include warming of the global climate system, and substantial increases in precipitation in some regions of the world and decreases in other regions (for these and other examples, see Solomon *et al.* 2007, pp. 35–54, 82–85; IPCC 2013b, pp. 3–29; IPCC 2014, pp. 1–32). Results of scientific analyses presented by the IPCC show that most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate and is ''very likely'' (defined by the IPCC as 90 percent or higher probability) due to the observed increase in greenhouse gas (GHG) concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from use of fossil fuels (Solomon *et al.* 2007, pp. 21–35; IPCC 2013b, pp. 11–12 and figures SPM.4 and SPM.5). Further confirmation of the role of GHGs comes from analyses by Huber and Knutti (2011, p. 4), who concluded it is extremely likely that approximately 75 percent of global warming since 1950 has been caused by human activities.

Scientists use a variety of climate models, which include consideration of natural processes and variability, as well as various scenarios of potential levels and timing of GHG emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (Meehl *et al.* 2007, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). All combinations of models and emissions scenarios yield very similar projections of increases in the most common measure of climate change, average global surface temperature (commonly known as global warming), until about 2030. Although projections of the magnitude and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increasing global warming through the end of this century, even for the projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, there is strong scientific support for projections that warming will continue through the 21st century, and that the magnitude and rate of change will be influenced substantially by the extent of GHG emissions (Meehl *et al.* 2007, pp. 760–764, 797–811; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529; IPCC 2013b, pp. 19–23). See IPCC 2013b (entire), for a summary of other global projections of climate-related changes, such as frequency of heat waves and changes in precipitation.

Various changes in climate may 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 threats in combination and interactions of climate with other variables (for example, habitat fragmentation) (IPCC 2014, pp. 4–11). Identifying likely effects often involves aspects of climate change vulnerability analysis. Vulnerability refers to the degree to which a species (or system) is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the type, magnitude, and rate of climate change and variation to which a species is exposed, its sensitivity, and its adaptive capacity (Glick *et al.* 2011, pp. 19–22; IPCC 2014, p. 5). There is no single method for conducting such analyses that applies to all situations (Glick *et al.* 2011, p. 3). We use our expert judgment and appropriate analytical approaches to weigh relevant information, including uncertainty, in our consideration of the best scientific information available regarding various aspects of climate change.

Global climate projections are informative, and, in some cases, the only or the best scientific information available for us to use. However, projected changes in climate and related impacts can vary across and within different regions of the world (IPCC 2013b, pp. 15–16). Therefore, we use ''downscaled'' projections when they are available and have been developed through appropriate scientific procedures, because such projections provide higher resolution information

that is more relevant to spatial scales used for analyses of a given species (see Glick *et al.* 2011, pp. 58–61, for a discussion of downscaling). With regard to our analysis for the western yellow-billed cuckoo, downscaled projections are available.

The Southwest is already experiencing the impacts of climate change. The region has heated up markedly in recent decades, and the period since 1950 has been hotter than any comparably long period in at least 600 years (Graumlich 1993, pp. 249–255; Salzer and Kipfmueller 2005, pp. 465–487; Millar *et al.* 2006, pp. 273–287; Ababneh 2008, pp. 59–78; Bonfils *et al.* 2008, pp. 6404–6424; Stevens *et al.* 2008, pp. 1–15; Salzer *et al.* 2009, pp. 20348–20353; Woodhouse *et al.* 2010, pp. 21283–21288; Hoerling *et al.* 2012, pp. 74–92). The decade 2001–2010 was the warmest in the 110-year instrumental record, with temperatures almost 2 °F higher than historic averages, with fewer cold snaps and more heat waves (Hoerling *et al.* 2012, pp. 74–92). Compared to temperature, precipitation trends vary considerably across the region, with portions experiencing both decreases and increases (Hoerling *et al.* 2012, pp. 74–92). There is mounting evidence that the combination of human-caused temperature increases and recent drought has influenced widespread tree mortality (Van Mantgem *et al.* 2009, pp. 521–524; Allen *et al.* 2010, pp. 660–684), increased fire occurrence and area burned (Westerling *et al.* 2006, pp. 940–943), and forest insect outbreaks (Bentz *et al.* 2010, pp. 602–613). Human-caused temperature increases and drought have also caused earlier spring snowmelt and shifted runoff to earlier in the year (Barnett *et al.* 2008, pp. 1080–1083).

There are three predictions for anticipated effects from climate change in the southwestern United States and parts of northwestern Mexico. First, climate change is expected to shorten periods of snowpack accumulation, as well as reduce snowpack levels. With gradually increasing temperatures and reduced snowpack (due to higher spring temperatures and reduced winter-spring precipitation), annual runoff will be reduced (Smith *et al.* 2003, p. 226; Ellis *et al.* 2010, p. 236), consequently reducing ground water recharge. Second, snowmelt is expected to occur earlier in the season because increased minimum winter and spring temperatures could melt snowpacks sooner, causing peak water flows to occur much sooner than the historical spring and summer peak flows (Smith *et al.* 2003, p. 226; Stewart *et al.* 2005, pp. 217–218, 224, 230) and reducing flows later in the season. Third, the hydrological cycle is expected to become more dynamic on average with climate models predicting increases in the variability and intensity of rainfall events. This change will modify disturbance regimes by changing the magnitude and frequency of floods.

Precipitation events under most climate change scenarios will decrease in frequency but increase in severity so that, paradoxically, a warmer atmosphere and an intensified water cycle are likely to mean not only a greater likelihood of drought for the Southwest, but also an increased risk of flooding (Karl *et al.* 2009, pp. 132–133; Dominguez *et al.* 2012, pp. 1–7). Precipitation patterns are already observed to be shifting in the Southwest, with more rain falling in heavy downpours that can lead to flooding (Karl *et al.* 2009, p. 133). Adding to flood risk is that the earlier streamflow from earlier snowmelt may impinge on the flood protection stages of reservoir operations so that less streamflow can be captured safely in key reservoirs, increasing spring flooding downstream (Smith *et al.* 2005, p. 1154; Karl *et al.* 2009, p. 133). In some sites, where natural floodplain dynamics allow for overbank flooding, this could result in a positive regenerating effect on habitat for the western yellow-billed cuckoo. However, where floodplains have been constrained, as in many areas of the range, such changes in hydrology could excessively scour remaining habitat, thus preventing their reestablishment and resulting in smaller patch size or loss of habitat for the western yellow-billed cuckoo. Long drought cycles could also hamper recruitment of riparian vegetation following scouring floods and lead to reduced cover and nest sites for the western yellow-billed cuckoo.

Exactly how climate change will affect precipitation from site to site within the range of the western yellow-billed cuckoo in the southwestern United States and northwestern Mexico is uncertain. However, consistent with recent observations of regional effects of climate change, the projections presented for the Southwest predict overall warmer, drier, and more drought-like conditions (Hoerling and Eischeid 2007, p. 19; Seager *et al.* 2007, p. 1181; Ellis *et al.* 2010, p. 243). For example, climate simulations of the Palmer Drought Severity Index (a calculation of the cumulative effects of precipitation and temperature on surface moisture balance) for the Southwest for the periods of 2006 to 2030 and 2035 to 2060 show an increase in drought severity with surface warming. Additionally, drought-like conditions will increase even during wetter simulations because of the effect of heat-related moisture loss through evaporation and evapotranspiration (Hoerling and Eischeid 2007, p. 19). Annual mean precipitation is likely to decrease in the Southwest, as is the length of snow season and snow depth (Sun *et al.* 2013, pp. 21–22; Garfin *et al.* 2014, pp. 462–486). Most models project a widespread decrease in snow depth and earlier snowmelt in the Rocky Mountains (Clow *et al.* 2012, 2583–2591; Pederson *et al.* 2013, 1811–1816).

Assessments for the Sonoran Desert are few, but the region is also expected to warm (Weiss and Overpeck 2005, pp. 2065–2077; National Park Service 2010, pp. 1–4; Munson *et al.* 2012, pp. 1083–1095). Since about the 1970s, the Sonoran Desert region appears to have experienced ''widespread warming trends in winter and spring, decreased frequency of freezing temperatures, lengthening of the freeze-free season, and increased minimum temperatures per winter year'' (Weiss and Overpeck 2005, p. 2065). The Sonoran Desert area is expected to warm faster and experience reduced annual precipitation, resulting in a reduction in soil moisture in an already dry environment. The area will also experience increases in the intensity of heat waves, decreases in the frequency of freezing temperatures, and lengthening of the freeze-free season. Munson *et al.* (2012) stated that ''Climate models and long-term trends predict increased variability in precipitation seasonality, with fewer, larger, and more intense precipitation events'' (Munson *et al.* 2012, pp. 1083–1095). Other researchers have also concluded similar climactic changes for the area (Easterling *et al.* 2000, pp. 2068–2074; Weiss and Overpeck 2005, pp. 2065–2077; Seager *et al.* 2007, pp. 1181–1184).

In California, regional downscaled climate change assessments (Point Reyes Bird Observatory (PRBO) Conservation Science 2011, pp. 1–68) indicate changes in precipitation and temperature of varying magnitude across ecoregions. Assessments for areas occupied by the western yellow-billed cuckoo, such as the Sacramento River, Sierra Nevada (southern), and Sonora Desert (lower Colorado River) (PRBO Conservation Science 2011, pp. 25, 28, 48), mostly indicate an overall reduction in precipitation and increase in average temperature, which can alter hydrology and negatively affect habitat for the western yellow-billed cuckoo, as

described previously. Furthermore, Gardali *et al.* (2012, pp. 8–10) ranked 358 avian taxa in California, and classified 128 as vulnerable to climate change. They ranked the western yellow-billed cuckoo as subject to a moderate level of climate vulnerability, owing in part to its specialization in habitat (riparian) that has already experienced significant loss or alteration. Of the 128 species that were rated vulnerable, only 48 were rated as having high or moderate climate vulnerability.

Regionally downscaled climate models for the Pacific Northwest project higher air temperatures in the next century (Littell *et al.* 2009, pp. 6–7) that will lead to lower soil moisture and increased evaporation from streams and lakes (Climate Leadership Initiative (CLI) and the National Center for Conservation Science and Policy 2009, p. 8). While high uncertainty exists in the total precipitation projections for the region (Littell *et al.* 2009, p. 1), effective precipitation (precipitation that contributes to runoff) may be reduced significantly even if there is no decline in total precipitation (CLI and the National Center for Conservation Science and Policy 2009, p. 8). Increases in extreme high precipitation falling as rain in the western Cascades and reductions in snowpack are key projections from high-resolution regional climate models (Littell *et al.* 2009, p. 1). These may result in more winter flooding and reduced summer streamflows in rivers that depend on snowmelt, which include many of the rivers in the Pacific Northwest.

In drier climates overall, there will be increases in riverine system temperatures that are predicted to result in periods of prolonged low flows and stream drying (Stromberg *et al.* 2013, pp. 411–415) and increased demand for water storage and conveyance systems (Stromberg *et al.* 2013, pp. 411–415). Warmer water temperatures across temperate regions are likely to increase the density and expand distribution of tamarisk because it has a higher tolerance for drought and salt than native cottonwoods and willows (Glenn and Nagler 2005, p. 439). This situation is expected to lead to the conversion of native and mixed (native and nonnative) riparian habitat to monotypic stands of tamarisk, which provides very little or no suitable breeding habitat for the western yellow-billed cuckoo (as described previously above).

Increased drought is expected to adversely affect food availability for western yellow-billed cuckoos (Newton 1980, pp. 11–12; Durst 2004, pp. 40–41; Scott *et al.* 2004, p. 70) through the disruption of the timing between a species and its food resources (Visser and Both 2005, pp. 2561–2569). For example, changes in precipitation or temperature may influence the peak timing of insect emergence or timing of the western yellow-billed cuckoo's arrival from its wintering grounds so that the nesting season does not coincide as closely with peak insect abundance (Anders and Post 2006, p. 225). This change in timing could result in reduced food availability for the western yellow-billed cuckoo and breeding success, possibly causing further population decline and curtailment of its occupied range.

Virtually all future climate scenarios for the Pacific Northwest predict increases in wildfire in western North America, especially east of the Cascades, due to higher summer temperatures, earlier spring snowmelt, and lower summer flows, which can lead to drought stress in trees (Littell *et al.* 2009, p. 14). These effects could result in both short-term and long-term loss of riparian habitat from excessive winter scouring, summer drying, and wildfire. Regional downscaled climate change models for the Intermountain West also provide similar projections for warmer, drier climate with a reduced snowpack and episodic precipitation events. Prolonged drought in the southwestern United States and northern Mexico is expected to increase fire frequency, which results in a short-term loss of patches of riparian or thorn forest habitat for breeding. When fire frequency increases, riparian and thorn forests do not have sufficient time to recover, resulting in habitat conversion to fire-adapted nonforested vegetation types unsuitable for nesting. Furthermore, the effects of climate change and ongoing reduction in habitat and patch fragmentation, discussed previously, would increase.

Little is known about the wintering habitat of the western yellow-billed cuckoo in South America, and uncertainty exists about how climate change will affect it there. Regional downscaled models project an increase in wet-season precipitation and a decrease in dry-season precipitation over most of South America (Kitoh *et al.* 2011, p. 1). In the future, precipitation intensity will increase over most of South America. In particular, precipitation intensity will be greatest over southeast South America, implying an increasing risk of flooding in this region (Kitoh *et al.* 2011, p. 1). At the same time, a large increase of consecutive dry days is projected over the western part of the Amazon, where extremes in seasonal precipitation and resulting runoff is projected to increase in the Amazon River, implying more floods in the wet season and droughts in the dry season (Kitoh *et al.* 2011, p. 1). Uncertainty exists regarding the specific effects of such changes on the wintering habitat of the western yellow-billed cuckoo.

In summary, the available climate change models are predicting altered future environmental conditions across the breeding range of the western yellow-billed cuckoo. In the southwestern United States, northern Mexico, California, Intermountain West, and Pacific Northwest, climate change is generally predicted to result in an overall warmer, drier climate, with periodic episodic precipitation events that, depending on site conditions, are expected to have adverse effects on habitat of the western yellow-billed cuckoo. In rivers that depend on snowmelt, these changes are expected to result in more winter flooding and reduced summer stream flows. The amount of surface ground water available to regenerate and sustain riparian forests is expected to decline overall with persistent drought, favor the spread of tamarisk and other nonnative vegetation, and increase fire frequency. Precipitation events under most climate change scenarios will decrease in frequency and increase in severity. This change may reduce available nesting sites, patch size, and affect prey abundance as a result of lower humidity in riparian areas from reduced moisture retention, and through periods of prolonged desiccation followed by scouring flood events. In addition, evidence shows that climate change may disrupt the synchrony of nesting western yellow-billed cuckoos and their food supply, causing further population decline and curtailment of its occupied range.

Impacts to habitat from climate change exacerbate impacts from impoundments, channelization, and alteration of river flows across the western United States and Mexico, and from conversion of habitat from native to mostly nonnative vegetation. Changing climate is expected to place an added stress on the species and its habitats. While we do not have evidence to suggest that the habitat of the western yellow-billed cuckoo is being substantially affected by climate change at this time, we expect long-term climate trends to have an overall negative effect on the available habitat throughout the breeding range of the western yellow-billed cuckoo. Moreover, a drying trend associated with global climate change may result in more dams, levees, or other activities to

ensure fresh water for human consumption, which may result in additional habitat loss from the activities described in the Habitat Loss from Dams and Alteration of Hydrology section, above.

Summary of Factor A

We have identified a number of threats to the habitat of the western yellow-billed cuckoo that have operated in the past, are impacting the species now, and will continue to impact the species in the future. The curtailment and decline in the habitat of the western yellow-billed cuckoo is primarily the result of the long-lasting effects of habitat loss from manmade features that alter watercourse hydrology so that the natural processes that sustained riparian habitat in western North America are greatly diminished. Loss and degradation of habitat has also occurred as a result of livestock overgrazing and encroachment from agriculture. All of these have the potential to promote, and are exacerbated by, the conversion of native habitat to predominantly nonnative vegetation. The curtailment, degradation, fragmentation, and loss of habitat for the western yellow-billed cuckoo is ongoing and, absent changes in the landscape, hydrology, or other factors, it will likely continue to be negatively impacted or lost into the future.

We recognize that climate change is a critical issue with potentially severe wide-ranging effects on the species and its habitat. The available scientific literature suggests that the effects of climate change will likely exacerbate multiple existing threats to the western yellow-billed cuckoo and its habitat. These threats include habitat loss and degradation from altered hydrology, with secondary effects from increases in nonnative vegetation and wildfire. These threats may result in smaller patch sizes of habitat such that many will be no longer occupied by the western yellow-billed cuckoo.

Conservation actions, such as habitat protection and restoration described above, have strong potential to be beneficial to the species by increasing the amount of available habitat and patch size. However, these efforts offset only a small portion of past losses and degradation of riparian habitat in the range of the western yellow-billed cuckoo. Habitat elsewhere in the range continues to be vulnerable to loss and degradation from ongoing alterations in hydrology, nonnative vegetation, and agricultural activities combined with additional or synergistic effects associated with climate change. Moreover, we expect these multiple stressors to continue to affect habitat of the western yellow-billed cuckoo into the future. The amount of time required for willow and cottonwood vegetation to mature and provide habitat for the western yellow-billed cuckoo under optimal hydrologic, environmental, and ecological conditions varies by location but may be as little as between 3 to 5 years (Golet *et al.* 2008, pp. 20–22). However, other vegetation used by the western yellow-billed cuckoo such as alder, walnut, sycamore, boxelder, ash, or mesquite would take several decades for habitat to mature to the point where it would be available for use (Strahan 1984, pp. 58–67; Opperman and Merenlender 2004, pp. 822–834; Trowbridge *et al.* 2004, pp. 157–164; Morris *et al.* 2006, pp. 106–116; Griggs 2009, p. 12). In areas where conditions are less than optimal (as is the current situation in most areas) it may take longer if at all (Briggs 1995, pp. 63–67).

The exact timeframe for resolving water management and delivery issues and their impact on the western yellow-billed cuckoo and its habitat would vary on the location, resource demands, sensitive habitat or species concerns, stakeholders, and amount of water available. As a result, we would expect that resolving water issues for the various uses (agriculture, urbanization, wildlife, and tribal interests) in the west will be a lengthy ongoing process and not be resolved in the near future (next 20 years) and may take substantially longer considering the increased demands and the effects of climate change.

Our review of the best available scientific and commercial information identified numerous activities or processes that threaten to destroy, modify, or curtail the western yellow-billed cuckoo's habitat or range now or are likely to in the near future in any portion of the western yellow-billed cuckoo range. These include habitat loss from reservoirs and water management, surface and groundwater diversion, flood control activities, gravel mining, agriculture, livestock grazing, invasive nonnative plants and their control, and climate change. We, therefore, conclude that habitat loss under Factor A currently constitutes a threat to the western yellow-billed cuckoo, and we expect these activities to continue and habitat loss to be a threat in the near future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There are no known threats to the western yellow-billed cuckoo resulting from overutilization for commercial, scientific, or educational purposes. Our review of the best available scientific and commercial information yielded nothing to indicate that overutilization for commercial, recreational, scientific, or educational purposes is occurring at this time or is likely to in the near future in any portion of the western yellow-billed cuckoo range. We, therefore, conclude that such overutilization does not currently constitute a threat to the western yellow-billed cuckoo, nor do we expect it to be a threat in the future.

C. Disease or Predation

Little is known about diseases in the western yellow-billed cuckoo. West Nile virus has recently spread throughout portions of the western United States. It poses a potential threat to many bird species. The U.S. Geological Survey's (USGS) National Wildlife Health Center has identified the yellow-billed cuckoo as a species that is subject to the effects of West Nile virus (USGS–National Wildlife Health Center 2005, p. 2). The Centers for Disease Control's (CDC) Vector-Borne Disease Web site reports that West Nile virus has been documented in a dead yellow-billed cuckoo (CDC 2012); however, it is unknown if this yellow-billed cuckoo was from the western DPS. Although the population of the western yellow-billed cuckoo has been in decline over several decades (see Historical and Current Status section, above), no evidence suggests that it has undergone a precipitous decline coincident with the relatively recent arrival of West Nile virus in western North America. Therefore, we conclude, based on the best available scientific and commercial information, which is limited, that the adverse effects of West Nile virus to the western yellow-billed cuckoo are not significant and do not constitute a threat at this time, nor is there any information to suggest that this situation will change into the future.

All bird species, including the yellow-billed cuckoo, are exposed, to some extent, to parasites. Greiner *et al.* (1975, pp. 1762–1787) found 5 of 16 yellow-billed cuckoos infected with Leucocytozoon, Trypanosoma, and microfilaria blood parasites. No information indicates whether these and other parasites (see Hughes 1999, p. 18, for a brief review) pose any threat to the western yellow-billed cuckoo.

Predation is a potential threat to the western yellow-billed cuckoo. On the Kern River, red-shouldered hawks (*Buteo lineatus*) and northern harriers (*Circus cyaneus*) have been observed preying on nestlings, and western yellow-billed cuckoos have been observed chasing western scrub-jays

(*Aphelocoma californica*) and loggerhead shrikes (*Lanius ludovicianus*) away from their nests (Laymon 1998, pp. 12–14); however, we do not have any information on the frequency of predation. An inverse relationship appears to exist between the presence of western yellow-billed cuckoos and western scrub-jays on the Sacramento River, indicating a possible aversion by the western yellow-billed cuckoos to nesting at sites occupied by western scrub-jays, a known predator of eggs and young (Halterman 1991, p. 38). Avian predators such as the Cooper's hawks (*Accipiter cooperii*) or other similarly sized avian predators are thought to be the only avian predator capable of taking adult western yellow-billed cuckoos (Laymon 1998, pp. 12–13). During migration, adult western yellow-billed cuckoo are susceptible to predation by raptors, such as the Aplomado falcons (*Falco femoralis*) (Hector 1985, p. 338); however, we have no information to suggest that the rate of adult predation is significantly affecting the western yellow-billed cuckoo population. In the Sonoran town of Alamos, Mexico, Mackay (David Mackay 2012, *in litt.*) witnessed a brown vine snake (*Oxybelis aeneus*) leaving a western yellow-billed cuckoo nest after eating one of four nestlings.

On the lower Colorado River, McNeil *et al.* (2011, p. 41) found that high nest predation rates (63 percent of nests failed) contributed to the much lower average nest productivity at restoration sites (1.25 young fledged per nest) compared to nests at the Bill Williams River NWR (2.14 young fledged per nest). Most of that predation was attributed to avian predators; however, for 2 consecutive years a nest was preyed upon by a California king snake (*Lampropeltis getula californiae*) (McNeil *et al.* 2011, p. 41; McNeil *et al.* 2012, p. 50). Nest predation may have been high in restoration sites because most were located adjacent to agricultural areas, which may have increased the exposure of nests to human-adapted avian predators that thrive in agricultural areas. Additionally, these sites did not yet have the height, structure, and composition of more complex riparian habitats (McNeil *et al.* 2011, pp. 41, 49; McNeil *et al.* 2012, p. 56) that may serve to hide nests from predators. Nest predation can be partially compensated by the ability of western yellow-billed cuckoos to renest when a nest fails. In general, despite the instances of nest predation listed above, western yellow-billed cuckoos have higher than normal nest success and lower nest predation rates than other open-cup nesting birds (Laymon *et al.* 1997, p. 11).

In summary, western yellow-billed cuckoos, particularly the eggs or young in nests, are vulnerable to predation. Predation may be a significant threat in some localities and in some years, and may be influenced by several factors, such as surrounding land use and size and complexity of riparian habitat. As a result, predation may act periodically in concert with other stressors that contribute to the decline of the species (which we discuss in greater detail under Factor E, below). However, we conclude that predation by itself does not pose a significant threat to the western yellow-billed cuckoo at this time, and we do not have any reason to believe that this situation will change substantially in the future.

We conclude that predation, parasites, and disease are not currently significant threats to the western yellow-billed cuckoo, and are not expected to become significant threats in the near future.

D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the western yellow-billed cuckoo discussed under other factors. We give strongest weight to statutes and their implementing regulations, and management direction that stems from those laws and regulations. They are nondiscretionary and enforceable, and are considered a regulatory mechanism under this analysis. Examples include State governmental actions enforced under a State statute or constitution, or Federal action under statute.

Some other programs are more voluntary in nature or dependent on available funding; in those cases, we analyze the specific facts for that effort to ascertain its effectiveness at mitigating the threat and the extent to which it can be relied on in the future. Having evaluated the significance of the threat as mitigated by any such conservation efforts, we analyze under Factor D the extent to which existing regulatory mechanisms adequately address the specific threats to the species. Regulatory mechanisms, if they exist, may preclude the need for listing if we determine that such mechanisms adequately address the threats to the species such that listing is not warranted.

We have identified a number of significant threats to the western yellow-billed cuckoo that are impacting the species now and will continue to impact the species in the future. The decline of the western yellow-billed cuckoo is primarily the result of the long-lasting effects of habitat loss and modification from altered hydrology resulting from decades of dam construction, channelization, water extraction, and other activities, as well as impacts associated with climate change. Other threats include loss of habitat to agricultural and other land uses, overgrazing, exposure to pesticides (which is addressed in Factor E, below), wildfire, and conversion of habitat to monotypic stands of nonnative vegetation. Under this factor, we discuss whether the existing regulatory mechanisms adequately address impacts to the western yellow-billed cuckoo described under Factors A and E, based on the best available information.

Federal Regulatory Mechanisms

In the United States, the Migratory Bird Treaty Act (MBTA) (16 U.S.C. Sec. 703–712) is the only current Federal protection provided for the yellow-billed cuckoo. The yellow-billed cuckoo (the entire taxonomically defined species), which includes the western yellow-billed cuckoo, is considered a ''migratory bird'' under the MBTA. The MBTA prohibits ''take'' of any migratory bird. Take is defined as: ''to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect.'' However, no provisions in the MBTA prevent habitat destruction unless direct mortality or destruction of active nests occurs.

The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*) requires that ''the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that . . . will preserve and protect certain public lands in their natural condition; (and) that will provide food and habitat for fish and wildlife. . . .'' Furthermore, it is the policy of the Bureau of Land Management (BLM) ''to manage habitat with emphasis on ecosystems to ensure self-sustaining populations and a natural abundance and diversity of wildlife, fish, and plant resources on public lands'' (BLM manual 6500.06). Similarly, the National Forest Management Act of 1976 (NFMA) directs that the National Forest System ''where appropriate and to the extent practicable, will preserve and enhance the diversity of plant and animal communities.'' Additionally, section 219.12(g) calls for the maintenance of viable populations of native vertebrates in national forests. As such, FLPMA and

NFMA have the potential to benefit the western yellow-billed cuckoo and its habitat. However, given that the BLM and USFS have discretion in how these statutes are carried out and measures are implemented, we continue to see continued loss and degradation of habitat for the western yellow-billed cuckoo on lands that these agencies manage.

Congress passed the Federal Water Pollution Control Act Amendments of 1972 and the Clean Water Act (CWA) of 1977 (33 U.S.C. 1251 *et seq.*) to provide for the restoration and maintenance of the chemical, physical, and biological integrity of the Nation's lakes, streams, and coastal waters. Primary authority for the implementation and enforcement of the CWA now rests with the U.S. Environmental Protection Agency (EPA) and, to a lesser extent, the USACE. In addition to the measures authorized before 1972, the CWA implements a variety of programs, including Federal effluent limitations and State water quality standards, permits for the discharge of pollutants and dredged and fill materials into navigable waters, and enforcement mechanisms. Section 404 of the CWA is the principal Federal program that regulates activities affecting the physical integrity of wetlands and other waters of the United States.

Section 404 prohibits the discharge of dredged or fill material in jurisdictional waters of the United States, unless permitted by USACE under section 404(a) (individual permits) or 404(e) (general permits), or unless the discharge is otherwise exempt from regulation as designated in section 404(r). Some areas of riparian habitat may be considered ''waters of the United States,'' but many areas of riparian habitat do not meet the term's strict definition. The Service can review permit applications and provide recommendations to the USACE to avoid and minimize impacts and to implement conservation measures for fish and wildlife resources, including the western yellow-billed cuckoo. However, incorporation of Service recommendations into section 404 permits is at the discretion of the USACE.

Furthermore, not all activities in wetlands or streams involve fill, and not all wetlands or streams fall under the jurisdiction of the USACE. For example, in areas where the historical floodplain has been cut off from the river by levees, determining the boundaries of wetlands subject to USACE jurisdiction becomes complex. The areas behind these levees have had their hydrological characteristics altered, soil conditions changed, and riparian vegetation removed. As a result, these former floodplains, which in some cases would be important to protect and restore as habitat for the western yellow-billed cuckoo, fall outside the jurisdiction of the USACE. Additionally, many actions that resulted in adverse hydrological modifications, such as channelization and levees, were implemented in compliance with the CWA.

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires all Federal agencies to formally document, consider, and publicly disclose the environmental impacts of major Federal actions and management decisions that have significant effects on the human environment (including natural resources); however, NEPA does not require that mitigation alternatives be implemented. Additionally, NEPA applies only to actions by Federal agencies, so private landowners are not required to comply with NEPA unless a Federal agency is involved through provision of Federal funding or a Federal permit.

Through the Fish and Wildlife Coordination Act (FWCA) (16 U.S.C. 661 *et seq.*), the Service may recommend discretionary conservation measures to avoid, minimize, and offset impacts to fish and wildlife resources resulting from Federal projects and water development projects authorized by the USACE and other Federal agencies such as Reclamation. Therefore, the FWCA may provide some protection for the western yellow-billed cuckoo and its habitat through avoidance and minimization measures that may be incorporated into Federal projects. However, these measures are discretionary.

A majority of dams in the western United States supply hydropower, and their construction and ongoing operation is authorized by the Federal Energy Regulatory Commission (FERC), under the Federal Power Act of 1920, which incorporates by reference the FWCA and NEPA. The remainder of hydropower in the western United States is largely produced by the USACE and Reclamation. Reclamation also oversees water diversion and delivery projects. FERC reconsiders its hydropower licenses every 30 to 50 years. Through the various Federal regulations under which these agencies implement their water projects, the Service has an opportunity to periodically review their permits and relicensing applications and provide its recommendations to avoid and minimize impacts, and implement conservation measures for fish and wildlife resources, including species such as the western yellow-billed cuckoo. Implementation of these recommendations by FERC, USACE, and Reclamation is discretionary for nonlisted species. We continue to see loss and degradation of habitat for the western yellow-billed cuckoo as a result of altered hydrology from operation of dams and other water supply projects, as described under Factor A.

The EPA is responsible for regulating pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act and the Food Quality Protection Act. Before a pesticide can be distributed, sold, and used in the United States, it must first go through a registration process through the EPA. The EPA conducts short- and long-term toxicity tests to evaluate potential adverse effects on humans, wildlife, fish, and plants, including endangered species and nontarget organisms, and evaluates the potential for possible contamination of surface water or ground water from leaching, runoff, and spray drift. The sensitivity of any life stages of the western yellow-billed cuckoo or its prey items to exposure from common agricultural pesticides that could leach, runoff, or migrate from agricultural areas into the habitat of the western yellow-billed cuckoo has not been tested. However the EPA does evaluate the effects of these factors on surrogate species and has determined the use of certain approved pesticides are appropriate in areas used by the western yellow-billed cuckoo. Even if approved application procedures are followed, pesticides could reduce available insect prey for the western yellow-billed cuckoos.

State Regulatory Mechanisms

The majority of occupied areas for the western yellow-billed cuckoo north of Mexico occur within California, Arizona, and New Mexico (Hughes 1999, p. 1). Only California classifies the western yellow-billed cuckoo as endangered (CDFW 2011, p. 10). The California Endangered Species Act (CESA) prohibits unpermitted possession, purchase, sale, or take of listed species. However, the CESA definition of take does not include harm, which under the Federal Act can include destruction of habitat that actually kills or injures wildlife by significantly impairing essential behavioral patterns (50 CFR 17.3). CESA does require consultation between the CDFW and other State agencies to ensure that their activities will not jeopardize the continued existence of State-listed species; however, the western yellow-billed cuckoo continues to decline in California despite its status

as a State-listed species. In Arizona, the western yellow-billed cuckoo is listed as a species of concern (Arizona Game and Fish Department 2002, p. 3), with no protective status. The western yellow-billed cuckoo has no special protective status in New Mexico.

The State of California has an additional layer of pesticide regulation through the Department of Pesticide Regulation, whose mission is to protect human health and the environment by regulating pesticide sales and use. While concentrating on human health and exposure to pesticides, the agency has a program (Endangered Species Project) that maps sites occupied by federally listed species and candidate species and evaluates pesticide exposure risks to the species at those sites. This project does not include species like the western yellow-billed cuckoo that are listed as endangered by the State but not the Federal Government. In addition, the work was carried out in 1997 prior to the western yellow-billed cuckoo becoming a Federal candidate species. As a result the western yellow-billed cuckoo has not been included in the project.

Washington State's Department of Fish and Wildlife considers the western yellow-billed cuckoo a candidate for listing. The State wildlife agencies in Wyoming, Montana, Colorado, and Texas classify the western yellow-billed cuckoo as a species of concern or a sensitive species. In Utah, the Utah Division of Wildlife Resources (UDWR) has designated the yellow-billed cuckoo as a State-sensitive species and the yellow-billed cuckoo has been a priority for the State's Native Terrestrial Wildlife Program since the late 1990's. For example, in 2009, surveys for the species were conducted on National Park Service and adjacent lands at Cubs Creek and Jones Hole in northeastern Utah (Beason 2009, pp. 1–19). During these surveys no western yellow-billed cuckoos were detected on lands managed by the National Park Service in Dinosaur National Monument or private land in northwestern Colorado. However, suitable habitat is found within Dinosaur National Monument. UDWR has implemented additional survey and monitoring efforts over the past 2 years. This status allows for enhanced attention for the species and potential voluntary conservation, but the status provides no conservation assurances or regulatory oversite.

The western yellow-billed cuckoo is identified as a Species of Greatest Conservation Need in Idaho's Comprehensive Wildlife Conservation Strategy (Idaho Department of Fish and Game 2005, Appendix B, p. 7), and, under Idaho State law, is considered a protected nongame species. It is illegal to intentionally take or possess a protected nongame species, except as provided in sections 36–106(e) and 36–1107, Idaho Code, by Commission rule, or the Idaho Administrative Procedures Act 13.01.10, ''Rules Governing the Importation, Possession, Release, Sale, or Salvage of Wildlife,'' subsection 100.06.b (Idaho Department of Fish and Game 2005, Appendix B, p. 5). While protected status extends certain protections to the western yellow-billed cuckoo in Idaho, neither this status nor the Species of Greatest Conservation Need designation protects its habitat.

In Nevada, the western yellow-billed cuckoo is identified as critically imperiled due to extreme rarity, imminent threats, or biological factors, but this designation provides no protection for habitat. Western yellow-billed cuckoos have no State status in Oregon because it has not been considered an active breeding species since the 1940s (Oregon Department of Fish and Wildlife 2005, p. 3). State Wildlife Action Plans that include the western yellow-billed cuckoo as a species of conservation concern are: California, Washington, Arizona, Colorado, Montana, Idaho, New Mexico, Utah, Texas, Nevada, and Wyoming. These plans identify conservation needs and actions for a broad range of species and habitats, but their implementation is discretionary.

In summary, where the western yellow-billed cuckoo is State-listed (CA), a State candidate (WA), a species of concern or sensitive species (AZ, ID, WY, MT, CO, TX), or critically imperiled (NV), these designations contain no protection for the western yellow-billed cuckoo from habitat modification or destruction, as described under Factors A and E. Existing State regulatory mechanisms are not specifically designed to protect the western yellow-billed cuckoo from habitat loss and degradation from altered hydrology from upstream dams and surface water and ground water diversions, encroachment into the floodplain by agricultural and other development activities, bank stabilization and levee construction and maintenance activities, overgrazing, pesticide use on adjacent agricultural lands, conversion of habitat to monotypic stands of nonnative vegetation, gravel mining, wildfire, drought, and climate change across the range of the western yellow-billed cuckoo.

Canadian, Mexican, and Other International Laws

Canada

The Canadian Government through the Department of the Environment (Environment Canada, which was first established by the Department of the Environment Act of 1971) administers numerous acts to preserve and enhance the quality of Canada's natural environment. Acts identified for conservation of wildlife and plant species or their habitat are identified below.

1916 Great Britain–United States Convention for the Protection of Migratory Birds. Canada has committed to migratory bird protection through the 1916 Great Britain–United States Convention for the Protection of Migratory Birds in Canada, which encourages voluntary cooperative actions to protect identified migratory birds. The yellow-billed cuckoo is listed under the 1916 Great Britain–United States Convention for the Protection of Migratory Birds in Canada. In addition, Canada has enacted the Migratory Birds Convention Act of 1994 (MBCA). The MBCA is intended to ensure the conservation of migratory bird populations by regulating potentially harmful human activities. The implementing regulations of the MBCA ban all activities that are harmful to migratory birds, their eggs or their nests, but does not protect habitat. Also, some activities, such as hunting or scientific collection, may be allowed with an appropriate permit.

The Species at Risk Act of 2002. The purpose of the Species at Risk Act (SARA) is to prevent Canadian native wildlife and plant species, subspecies, and distinct populations from becoming extirpated or extinct, to provide for the recovery of endangered or threatened species, and encourage the management of other species to prevent them from becoming at risk. SARA establishes the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) as an independent body of experts responsible for assessing and identifying species at risk. SARA also, among other objectives, establishes: Prohibitions to protect listed Canadian threatened and endangered species and their critical habitat; requirements for use of the best available knowledge on assessing threats to and conservation for wildlife and plant species; and long- and short-term objectives for development of recovery strategies and action plans.

The yellow-billed cuckoo is not identified as a species that is sensitive, threatened, or endangered under Canadian law. Within the range of the

western yellow-billed cuckoo, British Columbia considers the western yellow-billed cuckoo as an extirpated breeder, but that the species still does occur within the Province (British Columbia Conservation Data Centre, 2013).

Canadian Environmental Protection Act of 1999. The Canadian Environmental Protection Act sets out several guiding principles for conserving the environment including but not limited to supporting: Sustainable development; pollution prevention; elimination of releases of substances that are persistent or that bioaccumulate; an ecosystem approach and using the precautionary principle on issues related to the environment; science-based national standards; and seeking intergovernmental cooperation for consistency and avoidance of duplication of efforts. Because the yellow-billed cuckoo is not considered a species at risk, implementation of environmental protection regulations are optional for the species.

Mexico

The Mexican Government, through its Secretaria de Medio Ambiente y Recursos Naturales (SEMARNAT), has authority to designate species as threatened or endangered. The western yellow-billed cuckoo is not listed by the Mexican Government's Official Mexican Norm NOM–059–SEMARNAT–2010, Mexico's threatened species law. The yellow-billed cuckoo is listed under the 1936 Mexico–United States Convention for the Protection of Migratory Birds and Game Mammals (Service 2013b), which encourages voluntary cooperative actions to protect identified migratory birds and mammals.

In 1988, the Mexican Government passed the General Law of Ecological Equilibrium and Environmental Protection, which is similar to NEPA in the United States. This Mexican statute requires an environmental assessment of private or government actions that may affect wildlife or their habitat. Currently, no known regulatory mechanisms or conservation planning are in place that specifically targets the conservation of habitat within the range of the western yellow-billed cuckoo in Mexico. Therefore, we anticipate continued threats in Mexico, with little or no protection to the western yellow-billed cuckoo.

The National Natural Protected Areas (NPAs) system is a Mexican program to protect sensitive habitats and species. NPA designation is supposed to protect areas that have not been significantly altered by human activities and that provide diverse ecosystem services. However, prior to 1994, most NPAs lacked sound and comprehensive management plans. By 2000, approximately 30 percent of new and existing NPAs had developed management plans; however, under the NPA model these plans lacked detailed information, and in many cases could be considered obsolete. NPA goals to promote sustainable natural resources are often unattainable because of conflicting land ownership interests (Valdez *et al.* 2006, p. 272). The allocation of funds for management of natural reserve areas in Sonora is not assured, and some reserves have not received protection other than that given by government edicts or their natural isolation (Burquez and Martinez-Yrizar 1997, p. 378). Urban development has reduced some of Sonora's natural reserves. Three of the reserves have already disappeared, reflecting the tenuous state of many nature reserves in Mexico (Burquez and Martinez-Yrizar 2007, p. 546).

Wildlife management units, or UMAs, were part of a program developed and implemented by SEMARANT in 1997 to promote wildlife management on private property in Mexico (Weber *et al.* 2006, p. 1480). The UMA program has not been effective in promoting wildlife management or biodiversity conservation. It has increased the introduction of exotic wildlife species to meet hunting demands. There is a lack of technical capability on private lands to conduct proper wildlife monitoring and management (Weber *et al.* 2006, p. 1482). In Mexico, the exploitation of minerals and industrial development has not been matched by strong measures to protect the environment (Burquez and Martinez-Yrizar 2007, p. 547). Surface water and ground water management in Mexico is also lacking, and restoring water quality and quantity to water bodies is a primary concern (Organisation for Economic Co-operation and Development (OECD) 2013, p. 102). In the State of Sonora, 30 years of unregulated water extraction from both above and below ground has resulted in serious water resource overexploitation and degradation (OECD 2013, p. 115). Although regulatory measures are in place, they lack consistent implementation and oversight (OECD 2013, p. 133).

Current efforts for protecting the western yellow-billed cuckoo in Mexico primarily consist of identifying areas as Important Areas for Bird Conservation (Áreas de Importancia para la Conservación de las Aves), but no specific projects or conservation efforts are focused on the western yellow-billed cuckoo or its habitat (Sánchez-González and Berlanga 2012 in litt.).

Lack of habitat protection for the western yellow-billed cuckoo in northwestern Mexico also impacts the western yellow-billed cuckoo in the United States because individuals are known to make transitory movements up to several hundred miles between the southwestern United States and northern Mexico within a single breeding season (Sechrist *et al.* 2012, p. 5), so that individuals that breed in the United States also depend to some extent on habitat in northern Mexico. We are not aware of any information on the number of western yellow-billed cuckoos that utilize habitats in both countries during a given breeding season; however, these are also stopover areas between breeding and wintering grounds in South America, and are important as foraging habitat. Therefore, lack of regulatory protections for habitat of the western yellow-billed cuckoo in northwestern Mexico also affects western yellow-billed cuckoos in the southwestern United States.

In regard to potential for pesticide exposure south of the U.S. border, Mexico has the second largest pesticide sales in Latin America, behind Brazil, which together account for 78 percent of the volume of pesticides within 11 Latin American countries (Mora 1997, pp. 3–4). While Mexico has laws concerning pesticide use, and import regulations on certain pesticides, there is limited enforcement capacity (Behre 2003, pp. 337–338). The same is true in Paraguay, Bolivia, Brazil, and Argentina, where yellow-billed cuckoos winter. For example, in Paraguay, at the center of the yellow-billed cuckoo's wintering range, importation and use of many pesticides are banned, but it is estimated that the amount of pesticides that are imported illegally are double the amount that are imported legally (Scribano 2013, entire). For additional information on pesticides, see Factor E below.

Based on the best available information, the regulatory mechanisms in Mexico that would protect the western yellow-billed cuckoo from threats described under Factors A and E are either lacking or not being fully implemented. These include water supply projects, water diversions, expansion of agricultural activities and overgrazing, conversion of habitat to nonnative vegetation, climate change (Factor A), and pesticides, as well as the threat of small, isolated patches of western yellow-billed cuckoo habitat (Factor E).

Summary of Factor D

Various Federal, State, and international regulatory mechanisms in

place provide varying degrees of conservation oversight that may to some degree address the threat of ongoing habitat loss and degradation resulting from altered hydrology, conversion of habitat to nonnative vegetation, climate change, agricultural activities (Factor A), or exposure to pesticides and effects of small and isolated habitat patches (Factor E). In California, where the species is listed as endangered, regulations prohibit unpermitted possession, purchase, sale, or take of listed species. Such prohibition of take does not include the species' habitat, and the western yellow-billed cuckoo continues to decline in California despite its status as a State-listed species. In addition, even though the California Department of Pesticide Regulations has a program to protect endangered species, the western yellow-billed cuckoo has not been included as a covered species.

Because the yellow-billed cuckoo is not a protected or sensitive species in Canada, Mexico, or in a majority of the United States, and a variety of factors influence the species and its habitat, we have determined that the current regulatory regime does not adequately address the majority of impacts to the western yellow-billed cuckoo or its habitat. As described under Factor A, one of the primary threats with the greatest severity and magnitude of impact to western yellow-billed cuckoo is the loss of habitat as a result of altered hydrologic functioning of streams in the West. Although some protections currently exist for the species and its habitat as a result of existing regulatory mechanisms at the Federal, State, or local level, our evaluation suggests these protections are inadequate to address the threats associated with the species and its habitat.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Small and Widely Separated Habitat Patches

As described in the **Background** section and under Factor A, the habitat of the western yellow-billed cuckoo has undergone significant loss and modification within its occupied breeding range as a result of widespread multiple human-caused effects. These include altered hydrology in watercourses and past loss and degradation from agriculture. Past destruction and modification transformed formerly large expanses of riparian habitat into a number of smaller patches of smaller total area, isolated from each other by a matrix of mostly human-altered habitats (McGill, 1975, pp. 1–4; Thompson, 1961, pp. 294–315; Wilcove *et al.* 1986, p. 237). The potential natural regeneration or restoration of the habitat to reconnect these areas is low due to various reasons (see Factor A discussion). Under the best of circumstances, for riparian habitat (willows, cottonwoods) to mature to the point at which it provides for appropriate food, shelter, and breeding conditions for the western yellow-billed cuckoo may take 3–5 years (Golet *et al.* 2008, pp. 20–22). However, in areas where conditions are less than optimal, habitat may take several decades to mature to the point where it would be available for use (Strahan 1984, pp. 58–67; Briggs 1995, pp. 63–67; Opperman and Merenlender 2004, pp. 822–834; Trowbridge *et al.* 2004, pp. 157–164; Morris *et al.* 2006, pp. 106–116; Griggs 2009, p. 12).

As a result, the western yellow-billed cuckoo now primarily occurs in smaller, more widely separated populations. Compared to large populations, smaller populations are disproportionately affected by natural and manmade factors. These stressors vary in frequency, timing, and magnitude across the species' range. They are related or correlated to each other or act in combination to result in significant impacts to the western yellow-billed cuckoo within all or portions of its range.

One of the ramifications of smaller, more isolated habitat patches is that the smaller the patch, the more edge it has in proportion to its area, which increases the percentage of the available habitat exposed to the surrounding land uses (Hunter 1996, pp. 186–187). This is a particularly prevalent characteristic of the western yellow-billed cuckoo's remaining disjunct habitat patches, as many patches are in proximity to agricultural and other human-altered landscapes. For example, such land use currently dominates much of the riparian landscape within many regions, particularly along some reaches of the lower Colorado River, Sacramento River, Snake River, Verde River, Gila River, Santa Cruz River, San Pedro River, and Río Grande; and also in parts of northern Mexico in the vicinity of floodplain farming along the Sonora, Magdalena, and Moctezuma Rivers (Villaseñor-Gomez 2006, p. 111).

Agricultural activities on adjacent lands affect riparian bird communities in ways that may result in lower reproductive success, and possible abandonment of the patch, as reviewed by Saab (1999, pp. 136, 147–148). Saab (1999, p. 147) found that bird species, including the western yellow-billed cuckoo, were more likely to occur in riparian habitat along the Snake River, Idaho, in sites surrounded by upland natural vegetation than in habitat adjacent to agricultural lands. Saab found that, compared to habitat patches surrounded by natural habitat, patches near agricultural lands supported more avian nest predators that prosper in human-altered landscapes and have a greater effect on the smaller, fragmented habitats (Saab 1999, p. 147). Increases in these predators can result in more nest losses and discourage western yellow-billed cuckoos from nesting, thus suppressing local western yellow-billed cuckoo population size. Increases in nonnative vegetation can displace or degrade suitable nesting and foraging habitat, thereby leading to lower utilization of such areas by western yellow-billed cuckoos. Together, the effects can lead to western yellow-billed cuckoos abandoning these small habitat patches.

The western yellow-billed cuckoo is currently found in the largest contiguous and least-fragmented remaining habitat patches. For example, in California, sites larger than 198 ac (80 ha) in extent and wider than 950 ft (600 m) provided optimal patch size for western yellow-billed cuckoos (Laymon and Halterman 1989, p. 275). Nesting western yellow-billed cuckoos are sensitive to patch size and seldom use patches smaller than 325 × 975 ft (100 × 300 m) (Hughes 1999, p. 20). This observed preferential use of large patches strongly suggests that the western yellow-billed cuckoo is sensitive to fragmentation and reductions in habitat patch size. Moreover, patch-size reduction combined with the scarcity of larger patches keeps the western yellow-billed cuckoo breeding population size depressed. Such effects prevent the western yellow-billed cuckoo from reversing its long-term decline in population and range (Hunter 1996, pp. 179–187).

Moreover, isolated breeding sites separated by hundreds of miles of nonhabitat also reduce the ease with which dispersing juvenile and returning adult western yellow-billed cuckoos are able to find these sites. This isolation may result in low colonization and reoccupation rates, so that otherwise suitable habitat remains unoccupied or occupied at low densities (Laymon and Halterman 1989, p. 274; Hunter 1996, p. 185). For example, the Sacramento River still appears to have sufficient habitat to maintain a self-sustaining population of western yellow-billed cuckoos, as more than 25,000 ac (10,117 ha) of riparian and associated natural habitat has been protected and other sections are in the

process of being restored. However, not all suitable patches are occupied or may only be occupied in very low densities, and the western yellow-billed cuckoo population remains much lower than its potential (Dettling and Howell 2011, pp. 20–21).

On the Colorado River (between Lake Mead and the Mexico border), habitat restoration efforts are being implemented as a result of the Lower-Colorado River Multi-species Conservation Plan (LCR MSCP). The LCR MSCP permittees are in the process of creating and maintaining up to 4,050 ac (1,639 ha) of western yellow-billed cuckoo habitat, reducing the risk of loss of created habitat to wildfire, replacing created habitat affected by wildfire, and avoiding and minimizing operational and management impacts to western yellow-billed cuckoos over the 50-year life of the permit (2005 to 2055) (Lower Colorado River Multi-Species Conservation Program 2004, pp. 5–30–5–36, Table 5–10, 5–58–5–60). Not all of the habitat has been created, and as a result, the restoration sites are not contiguous along the entire river reach. Monitoring and survey efforts for the western yellow-billed cuckoo have shown an increase in detections, but the majority of detections were confined to only a few of the larger areas (McNeil *et al.* 2011, pp. 1–16).

In summary, despite efforts to protect and restore riparian habitat along the Sacramento River and Colorado River and elsewhere in the range of the western yellow-billed cuckoo, these efforts offset only a small fraction of historical habitat that has been lost. Therefore, the threats resulting from the species' behavioral response to the multiple, combined effects of small and widely separated habitat patches exacerbate the effect of other threats within a large portion of the range of the western yellow-billed cuckoo. Moreover, because the threats that create small and isolated patches are ongoing (see Factor A) and maturation of regenerated or restored habitat may take several decades to fully provide for the needs of the species, we expect the effects of the species' response to small patch size to continue to adversely impact the western yellow-billed cuckoo into the future.

Pesticides

Exposure to pesticides may also be a threat to western yellow-billed cuckoos because it negatively impacts populations of insect prey (Groschupf 1987, p. 29; Hughes 1999, p. 2). The effects of pesticides on western yellow-billed cuckoos can be from intentional aerial spraying of habitat for mosquito or forest pest control, or from overspray or drift when the species' foraging habitat is located next to agricultural fields. Pesticides can affect western yellow-billed cuckoos foraging for grasshoppers at the field-forest interface or foraging for caterpillars in riparian habitat adjacent to the sprayed fields. Accumulation of chlorinated hydrocarbon pesticides, particularly dichlorodiphenyltrichloroethane (DDT), has affected other bird species, particularly top predators (Robinson and Bolen 1989, pp. 269–275). Pesticides may affect behavior (for example, loss of balance) or cause death by direct contact. Pesticide use may indirectly affect western yellow-billed cuckoos by reducing prey numbers, or by poisoning nestlings if sprayed directly in areas where the birds are nesting (Laymon and Halterman 1987b, p. 23; Lehman and Walker 2001, p. 12).

Western yellow-billed cuckoo prey populations were affected by aerial spraying of larvicides for control of mosquitoes at Caswell State Park in California (Laymon 1998, p. 12) and in Colorado to control an outbreak of caterpillars on box elders near Durango (Colyer 2001, pp. 1–6). The available evidence suggests that a reduction in prey availability results in reduced nesting success (Laymon 1980, p. 27; Hughes 1999, pp. 19–20), and pairs may even forgo breeding in years with inadequate food supplies (Veit and Petersen 1993, pp. 258–259). Therefore, the application of pesticides directly onto areas of riparian habitat may indirectly affect the reproductive success of the western yellow-billed cuckoo, leading to nest failure and lowered population size. Additionally, because breeding site fidelity is in part dependent on previous successful nesting (see the Breeding Site Fidelity section of the proposed rule), western yellow-billed cuckoos may abandon otherwise suitable nest sites where prey availability is limited by pesticide use, resulting in curtailment of its occupied range.

Effects from overspray of pesticides are more pronounced in smaller patches next to agricultural fields (because they have more edges, which allows for increased chances of exposure), but the effects of pesticides could also affect larger habitat patches as well. In many areas riparian habitat borders agricultural lands, such as California's Central Valley, the lower Colorado River, Snake River, Gila River, Río Grande Valley, and rivers in northern Mexico, including the Sonora, Yaqui, Mayo, and Moctezuma, where western yellow-billed cuckoos are vulnerable to pesticide exposure. Laymon (1980, pp. 11–12) reported sublethal poisoning of young western yellow-billed cuckoos caused by spraying active nests in walnut orchards in California.

Although DDT use has been banned in the United States since 1972, and in Mexico since 1999, yellow-billed cuckoos may be exposed to DDT in Mexico or on wintering grounds where DDT is still used despite any bans on its use. The soil half-life for DDT is from 2 to 15 years. However, in some cases, half of the DDT initially present will remain for 20, 30, or more years (U.S. Department of Human Health & Human Services, Agency for Toxic Substances and Disease Registry 1994, pp. 3–4).

For example, yellow-billed cuckoos (most likely of the eastern population) collected during the spring and fall migration in Florida had unusually high concentrations of DDT, suggesting exposure on the wintering grounds in South America (Grocki and Johnston 1974, pp. 186–188). Analysis of two eggs collected in California in 1979 showed very low levels of dichlorodiphenyldichloroethylene (DDE), a stable metabolite of DDT, but eggshell fragments collected in 1985 from three nests along the South Fork Kern River in California averaged 19 percent thinner than pre-DDT era eggshells (Laymon and Halterman 1987b, pp. 22–23). DDT has caused eggshell thinning in other bird species, and this percentage of thinning in other species has allowed eggs to be crushed during incubation, but there is no information showing that western yellow-billed cuckoo eggs have been crushed during incubation because of shell thinning.

A recent study in southern Sonora, Mexico, tested for the presence of a group of agricultural pesticides banned in the United States, known as organochlorine pesticides (beta-hexachlorocyclohexane (BHC), lindane, aldrin, endrin, b-endosulfan, methoxychlor, p, p0–DDE, p, p0-Dichlorodiphenyldichloroethane (DDD), p, p0–DDT). Collectively called OCPs, these pesticides are persistent in the environment. Soil samples collected from 24 localities in the Yaqui and Mayo Valleys of southern Sonora, Mexico, watersheds in which the western yellow-billed cuckoo is known to breed, were found to have higher OCP levels than other regions of the world. The OCPs were predominantly DDT (Cantu-Soto *et al.* 2011, p. 559), despite its having been discontinued in Mexico in 1999 after decades of heavy use in agriculture and for malaria control (Yañez *et al.* 2004, p. 18). This finding may indicate recent applications of DDT in agricultural soils (Cantu-Soto *et al.*

2011, p. 559). Because of the proximity of habitat for western yellow-billed cuckoos to these valleys and the prevalence of floodplain agriculture in northern Mexico, these pesticides, especially DDT, may be having widespread long-lasting effects on the western yellow-billed cuckoo. These include direct and indirect exposure through ingestion of contaminated prey items, and reduction in prey availability from direct exposure and pesticide runoff into habitat that supports western yellow-billed cuckoos.

Neonicotinoid pesticides are systemic chemicals that are taken up through various plant parts and can be distributed through a plant's tissues. These chemicals can be applied to a plant as a seed coating, soil contact, irrigation water, or as a foliar spray. Many of these chemicals are long acting with half-lives up to 2 years. Plant tissues that have been treated are toxic to both sap-sucking (e.g., aphids and true bugs) and foliage-eating insects (e.g., caterpillars, katydids, grasshoppers, and beetles). Many of these foliage-eating insects are potential prey of the western yellow-billed cuckoo. These chemicals have the potential to reduce prey abundance if intentionally or accidentally applied to foliage on which western yellow-billed cuckoos forage. To date no scientific studies have been done on western yellow-billed cuckoos and their prey, but additional reports and research on these chemicals discuss the potential adverse effects (Mineau and Whiteside 2013; Hopwood *et al.* 2013; Mineau and Palmer 2013).

In summary, pesticide use is widespread in agricultural areas in the western yellow-billed cuckoo breeding range in the United States and northern Mexico. Yellow-billed cuckoos have been exposed to the effects of pesticides on their wintering grounds, as evidenced by DDT found in their eggs and eggshell thinning in the United States. Because much of the species' habitat is in proximity to agriculture, the potential exists for direct and indirect effects to a large portion of the species in these areas through altered physiological functioning, prey availability, and, therefore, reproductive success, which ultimately results in lower population abundance and curtailment of the occupied range. While agricultural pesticides can kill prey of the yellow-billed cuckoo, and documentation exists of pesticide exposure in the wild, described above, no known data are available to determine specifically how often agricultural chemicals may be affecting yellow-billed cuckoo prey availability, locations where it may be particularly significant, or the extent to which pesticides may be responsible for population-level effects in the western yellow-billed cuckoo. However, based on the close proximity of agricultural areas to where the western yellow-billed cuckoo breeds, the threat is potentially significant.

Collisions With Communication Towers, Wind Turbines, Solar Power Towers, and Other Tall Structures

Yellow-billed cuckoos are vulnerable to collision with communication towers and other tall structures, particularly during their migration. For example, several hundred yellow-billed cuckoo mortalities were documented at a single television tower in Florida over a 29-year period (Crawford and Stevenson 1984, p. 199; Crawford and Engstrom 2001, p. 383), and at an airport ceilometer in the east (Howell *et al.* 1954, p. 212). Lesser numbers of yellow-billed cuckoos have been reported as killed at other sites with both television towers and wind turbines in Wisconsin, West Virginia, and northern Texas (Kemper 1996, p. 223; Schechter 2009, p. 1; Bird Watching 2011, p. 1), Although these mortalities were in the eastern segment of the population, with the number of tall towers that have been constructed in recent years in the western United States, the potential exists for collisions with the western yellow-billed cuckoo. Remains of a yellow-billed cuckoo along with 70 other species of birds have been recovered at the Ivanpah solar power tower facility (California) during its first year of operation (Kagan *et al.* 2014, p. 10). Without further study, we anticipate this to be a minor, but ongoing, effect to individual yellow-billed cuckoos, but in combination with all the other effects to this species, as described under Factors A and E, mortality from collision would have an additive effect to the threats facing the western yellow-billed cuckoo.

Conservation Efforts To Reduce Other Natural or Manmade Factors Affecting Its Continued Existence

Active and hydrological process-based restoration of riparian habitat on the Colorado, Kern, and Sacramento Rivers and elsewhere will help reduce habitat fragmentation, small patch size, and overall lack of habitat. In some restoration plans, reduction of fragmentation is a stated goal, and restoration sites are planned for sites adjacent to existing habitat. The Colorado River riparian habitat restoration work is just beginning and is part of the Lower Colorado River Multi-Species Conservation Plan. This habitat conservation plan calls for the creation of 5,940 ac (2405 ha) of riparian habitat through active restoration of which 4,050 ac (1,640 ha) will be suitable for western yellow-billed cuckoos (Reclamation 2004, Sec. 5, p. 58). Active restoration work began on the South Fork Kern River in California, in 1986. To date, 340 ac (138 ha) of riparian habitat have been restored (Audubon California 2012, pp. 1–10). Along the Sacramento River, the Sacramento River National Wildlife Refuge has implemented an active riparian restoration program. Riparian habitat restoration activities have been conducted on 4,513 ac (1,826 ha) with 2,400 ac (738 ha) slated for additional restoration (Hammond 2011, p. 14). In Utah, from 2008–2013, the State's Watershed Restoration Initiative (WRI) has invested funding with partners toward collaborative habitat enhancement efforts in lowland riparian habitats. The efforts were distributed across 35 different projects and totaled more than 8,000 ac (3,200 ha).

At present, restoration occurs on a relatively small scale in comparison to the need to reduce habitat fragmentation and increase the overall extent of suitable habitat. Future process-based restoration projects that restore natural river hydrology show great promise for large-scale restoration of riparian habitat for western yellow-billed cuckoos.

To date, conservation efforts, though helpful, have been inadequate to significantly reduce the effects of natural or manmade factors affecting the western yellow-billed cuckoo.

Summary of Factor E

As noted in Factor A, habitat for the western yellow-billed cuckoo has been modified and curtailed, resulting in only remnants of formerly large tracts of native riparian forests, many of which are no longer occupied by western yellow-billed cuckoos. Despite recent efforts to protect existing, and restore additional, riparian habitat in the Sacramento, Kern, and Colorado Rivers, and other rivers in the range of the western yellow-billed cuckoo, these efforts offset only a small fraction of historical habitat that has been lost. Therefore, we expect the threat resulting from the combined effects associated with small and widely separated habitat patches to continue to affect a large portion of the range of the western yellow-billed cuckoo. This threat is particularly persistent where small habitat patches are in proximity to human-altered landscapes, such as near agricultural fields that dominate the landscape in many areas where the

western yellow-billed cuckoo occurs. As a result, the potential exists for pesticides to directly affect (poisoning individual cuckoos) and indirectly affect (reducing the prey base) a large portion of the species. These effects could ultimately result in lower population abundance and curtailment of its occupied range. Mortality from collisions with tall structures is also an ongoing but largely unquantified effect.

Cumulative Impacts

Habitat loss and degradation occurs throughout the range of the western yellow-billed cuckoo (see **Background** section and Factor A above), and many of the threats under Factor A have worked and are working in combination to reduce the amount, configuration, and quality of the riparian habitat that remains.

This array of Factor A threats, working in combination, creates the situation that then allows threats from the other listing factors to markedly affect the species. These other-factor threats may not be significant in and of themselves, but because they are not occurring in isolation they, in combination, are contributing to the population decline of the species. For example, as discussed in the Small and Widely Separated Habitat Patches section of Factor E, above, small habitat patches (resulting from the effects of Factor A threats) are more likely to have a larger number and a wider range of nest predators (see the Predation section of Factor C, above) because more nest predators occur in ecological edges. Additionally, habitat patches near areas of agricultural or urban development can foster higher densities of potential nest predators. Thus, any western yellow-billed cuckoo nesting in a small habitat patch near development may be subject to higher levels of nest predation and thus lower productivity. Moreover, the mere presence of certain nest predators in a habitat patch may elicit a behavioral response from western yellow-billed cuckoos such that they do not even attempt to nest in such habitat patches, even if other aspects of the habitat would suggest that it is suitable for nesting.

Similarly, riparian habitat patches that occur near urban and agricultural development may be subject to intentional or accidental pesticide spraying, as discussed in the Pesticide section under Factor E. This spraying would be unlikely to occur but for the habitat patch's proximity to development. This development likely occurs close to the riparian habitat through a process similar to the generalized scenario described above (see also specific details under Factor A).

Much of the available habitat is now in small patches with only a relatively few patches regularly occupied by nesting western yellow-billed cuckoos. Thus, the species' intolerance of small patch size in combination with extensive habitat loss has resulted in much less suitable habitat and a greatly reduced western yellow-billed cuckoo population size. In areas at the edge of the western yellow-billed cuckoo's current range (e.g., the Sacramento River), restoration of riparian habitat has not been accompanied by an increase in the species' population indicating that other factors may be limiting the population in those areas. Moreover, large areas of suitable habitat are unlikely to naturally regenerate within the range of the species into the future because western yellow-billed cuckoos need riparian habitat in a range of ages, including older, more structurally diverse areas for nesting, and nearly all of the areas where riparian habitat could grow in western North America are modified by dams, channelization, water extraction, and other activities that disrupt natural processes to allow good-quality riparian habitat to grow in a mosaic of different ages (see Factor A). Climate change is likely to further add to these impacts.

Summary of Factors

The primary factors threatening the western DPS of the yellow-billed cuckoo are the loss and degradation of habitat for the species from altered watercourse hydrology and natural stream processes, livestock overgrazing, encroachment from agriculture, and conversion of native habitat to predominantly nonnative vegetation as identified in Factor A. Additional threats to the species under Factor E include the effects of climate change, pesticides, wildfire, and small and widely separated habitat patches. The cumulative impact from various threats is also a factor that will exacerbate multiple existing threats to the western yellow-billed cuckoo and its habitat.

Various Federal, State, and international regulatory mechanisms in place provide varying degrees of conservation oversight that may to some degree address the threat of ongoing habitat loss and degradation; however, because the yellow-billed cuckoo is not a protected or sensitive species in a majority of the United States or in Canada and Mexico, the application of these regulatory mechanisms to conserve the western yellow-billed cuckoo or its habitat is unknown and the effectiveness of these regulatory mechanisms is uncertain.

These factors pose current and future threats to the species because they are ongoing and likely to continue in the near future.

Determination

We have carefully assessed the best scientific and commercial data available regarding the past, present, and reasonably anticipated future threats to the western yellow-billed cuckoo. In assessing the status of the western yellow-billed cuckoo, we applied the general understanding of ''in danger of extinction'' discussed in the December 22, 2010, Memorandum to the polar bear listing determination file, ''Supplemental Explanation for the Legal Basis of the Department's May 15, 2008, Determination of Threatened Status for the Polar Bear,'' signed by then Acting Director Dan Ashe (Service 2010, pp. 1–18). Threats to the western yellow-billed cuckoo exist for two of five threat factors. Threats also occur in combination, resulting in synergistically greater effects.

Factor A threats result from habitat destruction, modification, and degradation from dam construction and operations, water diversions, riverflow management; stream channelization and stabilization; conversion to agricultural uses, such as crops and livestock grazing; urban and transportation infrastructure; and increased incidence of wildfire. Continuing ramifications of actions that caused habitat loss in the past have resulted in ongoing curtailment of the habitat of the western yellow-billed cuckoo throughout its range. These factors also contribute to fragmentation and promote conversion to nonnative plant species, particularly tamarisk. The threats affecting western yellow-billed cuckoo habitat are ongoing and significant and have resulted in curtailment of the range of the species. Loss of riparian habitat leads not only to a direct reduction in western yellow-billed cuckoo numbers but also leaves a highly fragmented landscape, which in combination with other threats (see below), can reduce breeding success through increased predation rates and barriers to dispersal by juvenile and adult western yellow-billed cuckoos.

Factor E threats, including habitat rarity and small and isolated population sizes, cause the remaining western yellow-billed cuckoo populations to be increasingly susceptible to further declines through lack of immigration, reduced populations of prey species (food items), pesticides, and collisions with tall vertical structures during

migration. The serious and ongoing threat of small overall population size, which is the result of other threats in combination, leads to an increased chance of local extirpations.

The threats that affect the western yellow-billed cuckoo are important on a threat-by-threat basis, but are even more significant in combination. Habitat loss has been extensive throughout the range of the western yellow-billed cuckoo. The remaining riparian habitat is fragmented into small patches, which the species does not normally select as breeding habitat. Additionally, western yellow-billed cuckoos need riparian habitat in a range of ages, including older structurally diverse areas for nesting. This diversity of tree ages within the riparian vegetation (western yellow-billed cuckoo's habitat) is largely dependent on disturbances that affect some but not all of the vegetation within that habitat patch at one time. A number of threats, working in combination or individually, prevent such disturbance from happening now and will continue to do so in the future.

For example, dams and other flood control modifications to a watercourse may prevent floods from being severe enough to affect that habitat patch; channelization may restrict floodwaters to a narrow channel, allowing floodwaters to cause too much damage to habitat within the channel and not enough (or no) damage to habitat outside the channel; altered flood regimes may allow dead wood to accumulate, allowing fires, when they occur, to be severe and affect most of the patch; development and other human activities next to habitat patches may allow more wildfires to be ignited; and the reduction in patch size, through neighboring development, alteration of hydrology, or encroachment by nonnative plants, makes it more likely that a larger proportion of that patch will be affected during any given disturbance event. Moreover, nearly all areas where riparian habitat could potentially grow are modified by dams or water withdrawal and disrupted by other activities, often in combination, that prevent the reestablishment of riparian habitat. Patch size, when coupled with habitat loss and Factor C and E threats, including proximity to incompatible land uses, which increases exposure to predators and pesticides, is a significant cumulative threat to the western yellow-billed cuckoo now and in the future.

Per section 4(b)(1)(A) of the Act, prior to making our determination, we must first ''[take] into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.'' Restoration of riparian habitat on the Colorado, Kern, and Sacramento Rivers and elsewhere will help reduce habitat fragmentation, small patch size, and overall lack of habitat. However, at present, restoration is being done on a relatively small scale in comparison to the need to reduce habitat fragmentation and increase the overall extent of suitable habitat. DDT has been banned in the United States for several decades, but use of DDT continues in Central and South America, thus potentially exposing western yellow-billed cuckoos during migration and winter.

Through our analysis of the best available scientific and commercial information on the species' abundance, life history, current population status and trends, and the response of the species and its habitat to natural and anthropogenic threats, we have determined that the western yellow-billed cuckoo meets the definition of a threatened species under the Act, rather than endangered. 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.''

The geographic extent of the western yellow-billed cuckoo remains rather widespread through much of its historic range, conferring some measure of ecological and geographic redundancy and resilience. Although there is a general decline in the overall population trend and its breeding range has been reduced, the rate of the population decline and contraction of its breeding range is not so severe to indicate extinction is imminent for the western yellow-billed cuckoo. This current downward trend is slow and not expected to increase in the near future. The majority of large-scale habitat losses and conversions through dam building and agricultural development have already occurred, and we are not aware of any large-scale projects that would affect the species to the extent that the current trend of decline would change. Therefore, threats to the species and population declines do not currently reach the level typical of an endangered species.

Because the western yellow-billed cuckoo does not face any known sudden and calamitous threats, it is not a narrowly endemic species vulnerable to extinction from elevated or cumulative threats, is not yet restricted to a critically small range or critically low numbers, and currently does not show any substantial reduction in numbers, it would not meet the definition of ''endangered'' as determined by the Act. More appropriately, we find that the western yellow-billed cuckoo is likely to become endangered throughout all or a significant portion of its range within the foreseeable future, based on the timing, severity, and scope of the threats described above. Therefore, on the basis of the best available scientific and commercial information, we are listing the western distinct population segment of the yellow-billed cuckoo as a threatened species in accordance with sections 3(6), 3(20), and 4(a)(1) of the Act.

Significant Portion of the Range

Under the Act and our implementing regulations, a species may warrant listing if it is an endangered or 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 definition of ''species'' is also relevant to this discussion. The Act defines ''species'' as follows: ''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.'' The phrase ''significant portion of its range'' (SPR) is not defined by the statute, and we have never addressed in our regulations: (1) The consequences of a determination that a species is either endangered or likely to become so throughout a significant portion of its range, but not throughout all of its range; or (2) what qualifies a portion of a range as ''significant.''

In determining whether a species is threatened or endangered in a significant portion of its range, we first identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be both (1) significant and (2) threatened or endangered. To identify only those portions that warrant further consideration, we determine whether

there is substantial information indicating that: (1) The portions may be significant, and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. 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 essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the species' range that are not significant, such portions will not warrant further consideration.

If we identify portions that warrant further consideration, we then determine whether the species is threatened or endangered in these portions of its range. Depending on the biology of the species, its range, and the threats it faces, the Service may address either the significance question or the status question first. Thus, if the Service considers significance first and determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there. Likewise, if the Service considers status first and determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant. However, if the Service determines that both a portion of the range of a species is significant and the species is threatened or endangered there, the Service will specify that portion of the range as threatened or endangered under section 4(c)(1) of the Act.

We evaluated the current range of the western yellow-billed cuckoo to determine if there is any apparent geographic concentration of threats for the species. The western yellow-billed cuckoos are highly restricted to riparian habitat in their ranges, and the threats occur throughout the species' range. We considered the potential threats due to altered watercourse hydrology and natural stream processes, livestock overgrazing, encroachment from agriculture, conversion of native habitat to predominantly nonnative vegetation, pesticides, wildfire, small and widely separated habitat patches, and the effects of climate change. We found no concentration of threats because of the species' limited and curtailed range, and uniformity of the threats throughout its entire range. Having determined that the western yellow-billed cuckoo is threatened throughout its entire range, we must next consider whether there are any significant portions of the range where the western yellow-billed cuckoo is in danger of extinction or is likely to become endangered in the foreseeable future.

The western yellow-billed cuckoo is highly restricted to riparian habitat, and the threats to the species and its habitat occur throughout its breeding range. Therefore, we assessed the status of the western yellow-billed cuckoo throughout its entire breeding range. The threats to the survival of the species occur throughout the western DPS' breeding range and are not restricted to any particular significant portion of that range. We conclude that what affects the entire breeding portion of the western DPS' range affects the status of the entire western yellow-billed cuckoo throughout its breeding range, including migration corridors and stopover areas. Accordingly, our assessment and proposed determination applies to the western yellow-billed cuckoo throughout its entire breeding range.

We found no portion of the western yellow-billed cuckoo's range where threats are significantly concentrated or substantially greater than in other portions of their range and that factors affecting the species are essentially uniform throughout its range, indicating no portion of the range of the species warrants further consideration of possible endangered or threatened status under the Act. Therefore, we find there is no significant portion of the range of the western yellow-billed cuckoo that may warrant a different status.

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 requires that recovery actions be carried out for all listed species. The protection measures required of 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 Sacramento 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, Tribal, 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 private, State, and Tribal lands.

Following publication of this final listing rule, 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 States of Washington, Idaho, Montana, Oregon, California, Nevada, Wyoming, Utah, Colorado, Arizona, New Mexico, and Texas would be eligible for Federal funds to implement management actions that promote the protection or recovery of the yellow-billed cuckoo. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for the yellow-billed cuckoo. Additionally, we invite you to submit any new information on this 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 endangered or threatened 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 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 formal consultation with the Service.

Federal agency actions within or affecting the species' habitat that may require conference or consultation or both as described in the preceding paragraph include, but are not limited to, projects that will result in removal or degradation of riparian vegetation, altered streamflow or fluvial dynamics, or other habitat-altering activities on Federal lands or as a result of issuance of section 404 CWA permits by the USACE; construction and management of energy and power line rights-of-way by the FERC; construction and maintenance of roads, highways, or bridges by the Federal Highway Administration; grazing leases by the USFS or the BLM; and projects funded through Federal loan programs. Such projects may include, but are not limited to, construction or modification of reservoirs, levees, bank stabilization structures, water diversion and withdrawal projects, roads and bridges, utilities, recreation sites, and other forms of development, and livestock grazing.

Under section 4(d) of the Act, the Service has discretion to issue regulations that we find necessary and advisable to provide for the conservation of threatened species. The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to threatened wildlife. The prohibitions of section 9(a)(1) of the Act, as applied to threatened wildlife and codified at 50 CFR 17.31 make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) threatened wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may 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. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), 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 final listing on proposed and ongoing activities within the range of a listed species. However, at this time, we are unable to identify specific activities that would not be considered to result in a violation of section 9 of the Act because the western yellow-billed cuckoo occurs in riparian habitat across numerous western States that exhibit a variety of habitat conditions across its range, and it is likely that site- and project-specific conservation measures may be needed for activities that may directly or indirectly affect the species.

Based on the best available information, the following activities may potentially result in a violation of section 9 the Act; this list is not comprehensive: (1) Handling or collecting of the species; (2) destruction/alteration of the species' habitat by discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or diversion or alteration of surface or ground water flow; (3) livestock grazing that results in direct or indirect destruction of riparian habitat; (4) activities such as continued presence of cattle and fragmentation of riparian habitat; (5) pesticide applications in violation of label restrictions; and (6) release of biological control agents that modifies or destroys habitat used by the species.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

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 of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered

Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. During the development of this final rule, we contacted, held meetings with, or otherwise coordinated with all known tribal entities within the range of the species within the United States. Information solicited or gathered as result of this coordination has been incorporated into this final determination as appropriate. We will conduct further coordination during our designation of critical habitat for the species.

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Authors

The primary authors of this final rule are the staff members from the Service's Sacramento Fish and Wildlife Office and the Pacific Southwest Regional Office (Region 8) with assistance from staff from the Pacific Northwest Region (Region 1), the Southwest Region (Region 2), and the Mountain-Prairie Region (Region 6).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for ''Cuckoo, yellow-billed (Western DPS)'' to the List of Endangered and Threatened Wildlife in alphabetical order under Birds, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic Range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							
*	*	*	*	*	*	*	
Cuckoo, yellow-billed	*Coccyzus americanus*.	U.S.A., Canada, Mexico.	Western DPS: U.S.A. (AZ, CA, CO (western), ID, MT (western), NM (western), NV, OR, TX (western), UT, WA, WY (western)); Canada (British Columbia (southwestern); Mexico (Baja California, Baja California Sur, Chihuahua, Durango (western), Sinaloa, Sonora).	T	850	NA	NA
*	*	*	*	*	*	*	

* * * * *

Dated: September 24, 2014.

Daniel M. Ashe,

Director, U. S. Fish and Wildlife Service.

[FR Doc. 2014–23640 Filed 10–2–14; 8:45 am]

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Vol. 79 Friday,
No. 192 October 3, 2014

Part VI

The President

Memorandum of September 24, 2014—Delegation of Authority Under Sections 506(a)(1) and 552(c)(2) of the Foreign Assistance Act of 1961
Proclamation 9177—National Arts and Humanities Month, 2014
Proclamation 9178—National Breast Cancer Awareness Month, 2014
Proclamation 9179—National Cybersecurity Awareness Month, 2014
Proclamation 9180—National Disability Employment Awareness Month, 2014
Proclamation 9181—National Domestic Violence Awareness Month, 2014
Proclamation 9182—National Energy Action Month, 2014
Proclamation 9183—National Substances Abuse Prevention Month, 2014

Federal Register
Vol. 79, No. 192
Friday, October 3, 2014

Presidential Documents

Title 3—

The President

Memorandum of September 24, 2014

Delegation of Authority Under Sections 506(a)(1) and 552(c)(2) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of State:

(1) The authority under section 506(a)(1) of the Foreign Assistance Act of 1961 (FAA) to direct the drawdown of up to $5 million in defense articles and services of the Department of Defense and military education and training to provide immediate military assistance for the Government of Ukraine, to aid their efforts to respond to the current crisis, and to make the determinations required under such section to direct such a drawdown; and

(2) The authority under section 552(c)(2) of the FAA to direct the drawdown of up to $20 million in nonlethal commodities and services from any agency of the United States Government to provide assistance for the Government of Ukraine, and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, September 24, 2014

[FR Doc. 2014–23852
Filed 10–2–14; 11:15 am]
Billing code 4710–10

Presidential Documents

Proclamation 9177 of September 30, 2014

National Arts and Humanities Month, 2014

By the President of the United States of America

A Proclamation

In this complicated world and in these challenging times, the arts and humanities enhance the character of our Nation. The flash of insight that comes from watching a thought-provoking documentary or discovering a compelling novel sparks moments of joy, awe, and sorrow. From symphonies that bring tragedy to life with long bow strokes to architecture that challenges the boundaries of the world around it, these works add texture to our lives and reveal something about ourselves. During National Arts and Humanities Month, we reflect on the many ways the arts and humanities have contributed to the fabric of our society.

Since our earliest days, America has flourished because of the creative spirit and vision of our people. Our Nation is built on the freedom of expression, and we rely on the arts and humanities to broaden our views and remind us of the truths that connect us. We must never take for granted the wonder we feel when standing before a timeless work of art or the world of memories that is unlocked with a simple movement or a single note. By capturing our greatest hopes and deepest fears, the arts and humanities play an important role in telling our country's story and broadening our understanding of the world.

Cultivating the talents of our young people and ensuring they have access to the arts are critical to our Nation's growth and prosperity. To meet the challenges ahead, we must harness the skills and ingenuity of our children and grandchildren and instill in them the same passion and persistence that has driven centuries of progress and innovation. The arts and humanities provide important opportunities for our young people to unleash their creativity and reach for new heights. That is why my Administration is committed to bolstering initiatives that ensure the next generation has the tools to foster their artistic expression and the opportunities to go as far as their imaginations can take them.

This month, we pay tribute to the tremendous power of the arts and humanities to bring us together and expose us to new ideas that make us think and feel. As we carry forward this proud tradition, let us celebrate the ways our Nation's rich heritage has strengthened our country and inspired our lives.

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 October 2014 as National Arts and Humanities Month. I call upon the people of the United States to join together in observing this month with appropriate ceremonies, activities, and programs to celebrate the arts and the humanities in America.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth 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. 2014–23853
Filed 10–2–14; 11:15 am]
Billing code 3295–F4

Presidential Documents

Proclamation 9178 of September 30, 2014

National Breast Cancer Awareness Month, 2014

By the President of the United States of America

A Proclamation

This year, more than 230,000 women and 2,000 men will be diagnosed with breast cancer in America. The heartache and the pain of this disease will touch too many of our mothers, fathers, daughters, and sisters, and too many families will bear these burdens. During National Breast Cancer Awareness Month, we recognize all those who know the anguish of breast cancer, and we redouble our efforts to improve care and bring attention to this disease.

When breast cancer is caught early, treatments work best and survival rates increase. That is why all women and men should be familiar with the risk factors and symptoms of this disease. I encourage women to speak with their health care provider about the risk of breast cancer and the importance of recommended mammograms—breast cancer screenings that play an essential role in early detection. Whether you are looking for information about breast cancer prevention, treatment of metastatic breast cancer, or information on the latest research, all Americans can learn more by visiting *www.Cancer.gov.*

Today, more Americans are surviving breast cancer than ever before, but there is more work to do, and my Administration is fighting every day to improve the lives of breast cancer patients, survivors, and their families. We have invested billions of dollars in critical research to better understand the causes of breast cancer, develop new diagnostic tools, and pursue innovative treatments. The Affordable Care Act has expanded access to life-saving care for millions of Americans, including those affected by breast cancer, and requires most insurance plans to cover recommended preventive services, including mammograms, without copays. New protections under the law also eliminate annual and lifetime dollar limits on coverage and prohibit insurers from denying coverage because of pre-existing conditions, including cancer.

This month, as we honor those lost to breast cancer, let us join with the loved ones who celebrate their memory and the patients who battle this disease every day, as well as our Nation's advocates, medical researchers, and health care providers. Together, we renew our commitment to better prevent, detect, and treat breast cancer, and we continue our work toward a future free from cancer in all its forms.

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 October 2014 as National Breast Cancer Awareness Month. I encourage citizens, government agencies, private businesses, nonprofit organizations, and all other interested groups to join in activities that will increase awareness of what Americans can do to prevent breast cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth 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. 2014–23859
Filed 10–2–14; 11:15 am]
Billing code 3295–F4

Presidential Documents

Proclamation 9179 of September 30, 2014

National Cybersecurity Awareness Month, 2014

By the President of the United States of America

A Proclamation

Cyber threats pose one of the gravest national security dangers the United States faces. They jeopardize our country's critical infrastructure, endanger our individual liberties, and threaten every American's way of life. When our Nation's intellectual property is stolen, it harms our economy, and when a victim experiences online theft, fraud, or abuse, it puts all of us at risk. During National Cybersecurity Awareness Month, we continue our work to make our cyberspace more secure, and we redouble our efforts to bring attention to the role we can each play.

Cyberspace touches nearly every part of our daily lives. It supports our schools and businesses, powers the grid that stretches across our Nation, and connects friends and families around the world. Our constant connection has led to revolutions in medicine and technology and has bettered our society, but it has also introduced new risks, especially to our finances, identity, and privacy. That is why last year I signed an Executive Order directing my Administration to identify the best ways to bolster our country's cybersecurity. And earlier this year, we delivered on that commitment by releasing the Cybersecurity Framework. A model of public-private cooperation, this Framework will help industry and Government strengthen the security and resiliency of our critical infrastructure. My Administration is also investing in new strategies and innovations that help keep pace with rapidly changing technology, and because cyberspace crosses every boundary, we will continue engaging with our international partners.

Americans of all ages can take action to raise the level of our collective cybersecurity, and the Department of Homeland Security's ''Stop.Think.Connect.'' campaign is empowering individuals to do their part. Everyone should utilize secure passwords online and change them regularly. Internet users should take advantage of all available methods to protect their private accounts and information, and parents can teach their children not to share personal information over the Internet. Enhancing the security of our Nation's digital infrastructure is a shared responsibility, and together we can protect our most important information systems. To learn more about safe cyber practices, visit *www.DHS.gov/StopThinkConnect.*

Our commitment to maintaining an open, secure, and reliable cyberspace ensures the Internet will remain an engine for economic growth and a platform for the free exchange of ideas. This month, we resolve to work together to meet this global challenge.

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 October 2014 as National Cybersecurity Awareness Month. I call upon the people of the United States to recognize the importance of cybersecurity and to observe this month with activities, events, and training that will enhance our national security and resilience.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth 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. 2014–23860
Filed 10–2–14; 11:15 am]
Billing code 3295–F4

Presidential Documents

Proclamation 9180 of September 30, 2014

National Disability Employment Awareness Month, 2014

By the President of the United States of America

A Proclamation

Americans with disabilities lead thriving businesses, teach our children, and serve our Nation; they are innovators and pioneers of technology. In urban centers and rural communities, they carry forward our Nation's legacy of hard work, responsibility, and sacrifice, and their contributions strengthen our economy and remind us that all Americans deserve the opportunity to participate fully in society. During National Disability Employment Awareness Month, we celebrate the Americans living with disabilities, including significant disabilities, who enrich our country, and we reaffirm the simple truth that each of us has something to give to the American story.

This year's theme, ''Expect. Employ. Empower.,'' reminds us that every American has a right to dignity, respect, and a fair shot at success in the workplace. For too long, workers with disabilities were measured by what people thought they could not do, depriving our Nation and economy of the full talents and contributions of millions of Americans. Nearly 25 years ago, the Americans with Disabilities Act codified the promise of an equal opportunity for everyone who worked hard, and in the years since, Americans with disabilities have reached extraordinary heights. But when employees with disabilities are passed over in the workplace or denied fair accommodations, it limits their potential and threatens our democracy; when disproportionate numbers of Americans with disabilities remain unemployed, more work must be done to achieve the spirit of what is one of the most comprehensive civil rights bills in the history of our country.

My Administration remains committed to tearing down the barriers that prevent Americans with disabilities from living fully independent, integrated lives. We have supported programs that more effectively prepare workers, including those with disabilities, for high-growth, high-demand careers, and we have found new ways to encourage businesses to foster flexible workplaces that are open to diverse skills. We are also working to ensure those living with disabilities have access to the resources that support employment, including accessible housing, transportation, and technology.

Meaningful careers not only provide ladders of opportunity into the middle class, but they also give us a sense of purpose and self-worth. When Americans with disabilities live without the fear of discrimination, they are free to make of their lives what they will. This month, we renew our commitment to cultivate a more inclusive workforce, and we continue our efforts to build a society where everyone who works hard has a chance to get ahead.

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 October 2014 as National Disability Employment Awareness Month. I urge all Americans to embrace the talents and skills that individuals with disabilities bring to our workplaces and communities and to promote the right to equal employment opportunity for all people.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth 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. 2014–23862
Filed 10–2–14; 11:15 am]
Billing code 3295–F4

Presidential Documents

Proclamation 9181 of September 30, 2014

National Domestic Violence Awareness Month, 2014

By the President of the United States of America

A Proclamation

Domestic violence affects every American. It harms our communities, weakens the foundation of our Nation, and hurts those we love most. It is an affront to our basic decency and humanity, and it must end. During National Domestic Violence Awareness Month, we acknowledge the progress made in reducing these shameful crimes, embrace the basic human right to be free from violence and abuse, and recognize that more work remains until every individual is able to live free from fear.

Last month, our Nation marked the 20th anniversary of the Violence Against Women Act (VAWA). Before this historic law, domestic violence was seen by many as a lesser offense, and women in danger often had nowhere to go. But VAWA marked a turning point, and it slowly transformed the way people think about domestic abuse. Today, as 1 out of every 10 teenagers are physically hurt on purpose by someone they are dating, we seek to once again profoundly change our culture and reject the quiet tolerance of what is fundamentally unacceptable. That is why Vice President Joe Biden launched the *1is2many* initiative to engage educators, parents, and students while raising awareness about dating violence and the role we all have to play in stopping it. And it is why the White House Task Force to Protect Students from Sexual Assault and the newly launched ''It's On Us'' campaign will address the intersection of sexual assault and dating violence on college campuses.

Since VAWA's passage, domestic violence has dropped by almost two-thirds, but despite these strides, there is more to do. Nearly two out of three Americans 15 years of age or older know a victim of domestic violence or sexual assault, and domestic violence homicides claim the lives of three women every day. When women and children are deprived of a loving home, legal protections, or financial independence because they fear for their safety, our Nation is denied its full potential.

My Administration is committed to reaching a future free of domestic violence. We are building public-private partnerships to directly address domestic violence in our neighborhoods and workplaces, and we are helping communities use evidence-based screening programs to prevent domestic violence homicides. At the same time, the Federal Government is leading by example, developing policies to ensure domestic violence is addressed in the Federal workforce. New protections under the Affordable Care Act provide more women with access to free screenings and counseling for domestic violence. And when I proudly reauthorized VAWA last year, we expanded housing assistance; added critical protections for lesbian, gay, bisexual, and transgender Americans; and empowered tribal governments to protect Native American women from domestic violence in Indian Country. Our Nation's success can be judged by how we treat women and girls, and we must all work together to end domestic violence. As we honor the advocates and victim service providers who offer support during the darkest moments of someone's life, I encourage survivors and their loved ones who are seeking assistance to reach out by calling the National Domestic Violence Hotline at 1–800–799–SAFE or visiting *www.TheHotline.org.*

This month, we recognize the survivors and victims of abuse whose courage inspires us all. We recommit to offering a helping hand to those most in need, and we remind them that they are not alone.

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 October 2014 as National Domestic Violence Awareness Month. I call on all Americans to speak out against domestic violence and support local efforts to assist victims of these crimes in finding the help and healing they need.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth 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. 2014–23867
Filed 10–2–14; 11:15 am]
Billing code 3295–F4

Presidential Documents

Proclamation 9182 of September 30, 2014

National Energy Action Month, 2014

By the President of the United States of America

A Proclamation

Safeguarding America's energy future is an economic, environmental, and national security imperative. The energy choices we make today will have a substantial impact on the world we leave to our children and grandchildren. By pursuing an aggressive All-of-the-Above energy strategy, we can support economic growth and job creation, enhance energy security, and lay the foundation for a low-carbon energy future. During National Energy Action Month, we embrace our profound obligation to leave generations to come a cleaner, safer, more stable world, and we resolve to stand up, speak out, and fight for the urgent action this pivotal moment in history demands.

Our country's energy sector is undergoing a significant transformation, and today we are closer to energy independence than we have been in decades. The United States generates more renewable energy—from sources like wind and solar power—than ever before, we are the number one natural gas producer in the world, and we are building the first nuclear power plants in over three decades. These gains have brought jobs back to America and created more than 55,000 new jobs. And since I took office, domestic energy-related emissions of carbon dioxide have declined. As our Nation produces more traditional energy and sets the groundwork for the energy sources of the future, our achievements demonstrate that there is no contradiction between a sound environment and a thriving economy.

A low-carbon, clean energy strategy can be an engine of growth for decades to come, but transitioning our economy takes time, and there is more work to do. That is why my Administration has made the largest investment in clean energy in American history, and why I have taken action to ensure our Nation is a leader in the energy sources of tomorrow. We have partnered with businesses that know investing in renewable energy is not only good for the environment, but also for their bottom line, and we are supporting training programs that will help 50,000 workers learn the skills clean energy companies are looking for. The Government is leading the way by deploying renewable energy on public lands and across federally subsidized housing and military installations. And I continue to support incentives for private investment in these energy sources, including Federal financing, which—during my Administration—has brought over $30 billion of capital to the clean energy sector.

As we are advancing low-carbon technologies and developing cleaner fuels, we are also working to promote energy efficiency. Cutting our energy waste is one of the fastest, easiest, and cheapest ways to create jobs, save families money, and reduce our carbon pollution. The buildings we live and work in are responsible for about one-third of our greenhouse gases, and my Better Buildings Challenge is on track to improve the energy efficiency of thousands of multi-family homes, commercial buildings, and industrial plants by 20 percent by the year 2020. We have set new fuel standards for our cars and trucks so they will go twice as far on a gallon of gas by the middle of the next decade and invested billions of dollars in energy upgrades to Federal buildings. We have concrete strategies that are proven

to create jobs and reduce emissions, and we must all pledge to do our part.

The threat of climate change requires us to act now. We have a chance to improve public health, protect our environment, and better our world, and the American people have the skills and innovative spirit needed to seize this opportunity. This month, we look forward and boldly declare our intent to rise to the challenge of a changing world. As caretakers of our planet, let us resolve to build a cleaner, more prosperous, and more secure world for all of humanity.

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 October 2014 as National Energy Action Month. I call upon the citizens of the United States to recognize this month by working together to achieve greater energy security, a more robust economy, and a healthier environment for our children.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth 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. 2014–23869
Filed 10–2–14; 11:15 am]
Billing code 3295–F4

Presidential Documents

Proclamation 9183 of September 30, 2014

National Substance Abuse Prevention Month, 2014

By the President of the United States of America

A Proclamation

Substance abuse disrupts our families, schools, and communities and limits the success of young people across our country. It destroys relationships and stands in the way of academic achievement. Every day, thousands of young Americans try drugs or alcohol for the first time, and for many, this decision will have a profound impact on their health and well-being. This month, we join with families, schools, and local leaders to promote safe and healthy neighborhoods and help ensure all our children have the support and resources they need to achieve their full potential.

Preventing substance use before it begins is the most effective way to eliminate the damage caused by drugs and the abuse of alcohol. That is why my Administration's 2014 *National Drug Control Strategy* supports evidence-based education and outreach programs that connect with young people at schools, on college campuses, and in the workplace. This year, through the Drug-Free Communities Support Program, we are investing in 680 local coalitions that are working to reduce substance use in cities and towns across our country. These partners raise awareness of the harms associated with drug and alcohol use and create supportive environments that foster good decisionmaking.

Substance use affects everyone, and each of us can play a part in helping the next generation make choices that support physical, mental, behavioral, and emotional health. Parents, mentors, and community members can model a healthy lifestyle and should talk with kids early and often about the dangers of drug and alcohol use. During National Substance Abuse Prevention Month, we recognize all those who work to prevent substance use in our neighborhoods, and we renew our commitment to building a safer, drug-free America. Together, we can make sure all children have the opportunity to pursue happy, fulfilling, and productive lives.

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 October 2014 as National Substance Abuse Prevention Month. I call upon all Americans to engage in appropriate programs and activities to promote comprehensive substance abuse prevention efforts within their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth 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. 2014–23871
Filed 10–2–14; 11:15 am]
Billing code 3295–F4

Reader Aids

Federal Register

Vol. 79, No. 192

Friday, October 3, 2014

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
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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**
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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
59423–59622 2
59623–60056 3

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.

3 CFR

Proclamations:
9174 59417
9175 59419
9176 59421
9177 60043
9178 60045
9179 60047
9180 60049
9181 60051
9182 60053
9183 60055

Administrative Orders:
Memorandums:
Memorandum of September 24, 2014 60041

7 CFR

319 ..... 59087, 59089

10 CFR

72 59623
431 59090

Proposed Rules:
72 59693
431 59153
460 59154

11 CFR

Proposed Rules:
100 59459

12 CFR

701 59627
706 59627
790 59627

14 CFR

25 ..... 59423, 59431
39 ..... 59091, 59093, 59096, 59102, 59630, 59633, 59636, 59640, 59643
73 59645

Proposed Rules:
39 ..... 59154, 59157, 59160, 59162, 59459, 59461, 59463, 59465, 59467, 59468, 59695, 59697

15 CFR

Proposed Rules:
762 59166

16 CFR

1240 59962

17 CFR

200 59104

Proposed Rules:
23 59898
140 59898

18 CFR

4 59105
380 59105

21 CFR

Proposed Rules:
179 59699

24 CFR

5 59646
232 59646

26 CFR

1 59112
54 59130

29 CFR

2590 59130

30 CFR

Proposed Rules:
7 59167
75 59167

31 CFR

Proposed Rules:
1 59699

32 CFR

Proposed Rules:
86 59168

33 CFR

100 59647
117 ..... 59431, 59432
165 ..... 59648, 59650

Proposed Rules:
165 ..... 59173, 59701

38 CFR

Proposed Rules:
38 59176

40 CFR

52 ..... 59433, 59435, 59663
81 59674
180 ..... 59115, 59119
271 59438
272 59438

Proposed Rules:
52 ..... 59471, 59703
81 59703
271 59471
272 59471
300 ..... 59179, 59182
721 59186

42 CFR

405 59675
412 ..... 59121, 59675

413.....59675
415.....59675
422.....59675
424.....59675
430.....59123
431.....59123
433.....59123
435.....59123
436.....59123
440.....59123
485.....59675
488.....59675

Proposed Rules:
1001.....59717
1003.....59717

44 CFR
64.....59123, 59127

45 CFR
146.....59130
147.....59137
155.....59137

47 CFR
20.....59444
27.....59138
73.....59447

49 CFR
10.....59448
26.....59566
355.....59450
365.....59450
369.....59450
383.....59450
384.....59450
385.....59450
387.....59450
390.....59450
391.....59139, 59450
392.....59450
395.....59450
397.....59450

50 CFR
17.....59140, 59992
648.....59150

Proposed Rules:
17.....59195, 59364
622.....59204
648.....59472
679.....59733

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 October 2, 2014

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